

LABOR DEPARTMENT ERISA COMPLIANCE

HEARINGS BEFORE THE COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

EXAMINATION INTO THE LABOR DEPARTMENT'S HANDLING
OF ENFORCEMENT CASES INVOLVING ABUSE OF UNION PEN-
SION FUNDS

FEBRUARY 23 AND 24, 1962



Printed for the use of the Committee on Labor and Human Resources

U.S. GOVERNMENT PRINTING OFFICE

92-968 O

WASHINGTON : 1962

S 541-41

COMMITTEE ON LABOR AND HUMAN RESOURCES

ORRIN G. HATCH, Utah, *Chairman*

ROBERT T. STAFFORD, Vermont

DAN QUAYLE, Indiana

PAULA HAWKINS, Florida

DON NICKLES, Oklahoma

LOWELL P. WEICKER, Jr., Connecticut

GORDON J. HUMPHREY, New Hampshire

JEREMIAH DENTON, Alabama

JOHN P. EAST, North Carolina

EDWARD M. KENNEDY, Massachusetts

JENNINGS RANDOLPH, West Virginia

HARRISON A. WILLIAMS, Jr., New Jersey

CLAIBORNE PELL, Rhode Island

THOMAS F. EAGLETON, Missouri

DONALD W. RIEGLE, Jr., Michigan

HOWARD M. METZENBAUM, Ohio

GEORGE W. PRITTS, Jr., *Chief Counsel*

RENN M. PATCH, *Staff Director and General Counsel*

LAWRENCE C. HOROWITZ, M.D., *Minority Staff Director*

(II)

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

TUESDAY, FEBRUARY 23, 1982

	Page
Ryan, Hon. T. Timothy, Jr., Solicitor of Labor, U.S. Department of Labor	22
Clayton, Jeffrey N., Administrator, Pension and Welfare Benefit Program, U.S. Department of Labor	23
Gallagher, Monica, Associate Solicitor of Labor, Plan Benefits Security Division, U.S. Department of Labor	44
Young, John Harding, Trial Counsel, U.S. Department of Labor	199
Kane, Thomas, Chief, Division of Reporting Enforcement, Office of Enforcement, Pension and Welfare Benefit Programs, U.S. Department of Labor	212

WEDNESDAY, FEBRUARY 24, 1982

Gallagher, Monica, Associate Solicitor, Plan Benefits Security Division, U.S. Department of Labor	285
Ryan, Hon. T. Timothy, Jr., Solicitor of Labor, U.S. Department of Labor	360
Young, John Harding, Trial Counsel, U.S. Department of Labor	365
Stern, Edward, Financial Analyst, Office of Management, Labor Management Services Administration, U.S. Department of Labor	390
Lanoff, Ian, former administrator, Pension and Welfare Benefit Program, U.S. Department of Labor	425

STATEMENTS

Clayton, Jeffrey N., Administrator, Pension and Welfare Benefit Program, U.S. Department of Labor	23
Gallagher, Monica, Associate Solicitor of Labor, Plan Benefits Security Division, U.S. Department of Labor	44
Prepared statement	47
February 24, 1982 statement	285
Kane, Thomas, Chief, Division of Reporting Enforcement, Office of Enforcement, Pension and Welfare Benefit Programs, U.S. Department of Labor	212
Lanoff, Ian, former Administrator, Pension and Welfare Benefit Program, U.S. Department of Labor	425
Ryan, Hon. T. Timothy, Jr., Solicitor of Labor, U.S. Department of Labor	22
Prepared statement	29
February 24, 1982 statement	360
Stern, Edward, Financial Analyst, Office of Management, Labor Management Services Administration, U.S. Department of Labor	390
Young, John Harding, Trial Counsel, U.S. Department of Labor	199
Prepared statement	206
February 24, 1982 statement	365

ADDITIONAL INFORMATION

Articles, publications, etc.:	
Actuarial Valuation Certificate of the Southern Nevada Culinary and Bartenders Pension Trust, July 10, 1980	672
Affidavit of Joseph L. Fink, M.D., Las Vegas, Nev	282

Articles, publications, etc.—Continued

Audit Investigation of the Southern Nevada Culinary and Bartenders Pension Trust Fund, memorandum from Edward F. Daly, Assistant Director, Division of Enforcement to Walter Slater, ARA for FWBP, January 18, 1977—Document No. 2.....	Page 7
Compliance with the conditions of exemption D-964, for the Southern Nevada Culinary and Bartenders Pension Trust, memorandum from Edward Stern to Ian Lanoff, Administrator, PWBP, January 9, 1979—Stern Document No. 1.....	395
October 10, 1978—Stern Document No. 2.....	397
Confirmation of Existing Procedures Covering Department of Labor/Department of Justice Coordination of Enforcement Responsibilities, January 19, 1979.....	353
Culinary Workers Pension Trust, memorandum from Leonard L. Garofolo to Kenneth L. Evans, Area Administrator, Los Angeles Area Office, February 7, 1978—Committee Document No. 24.....	312
Exemption reports re Southern Nevada Culinary and Bartenders Pension Trust, memorandum from Alan D. Lebowitz, Assistant Administrator, Office of Fiduciary Standards, from Ian D. Lanoff, Administrator, Pension and Welfare Benefit Programs, July 2, 1979.....	409
Fourco Glass Co. pension plan for United Glass and Ceramic Workers, Case No. 21-5591(48), memorandum from Willie Alexander, attorney, PBSO for the file, April 3, 1981 (with attachment).....	536
Fourco Statute of Limitations Waiver, memorandum from Carl A. Hildebrandt to Norman Goldberg, Esq., counsel, February 17, 1981 (with attachment)—Backlog Document No. 8.....	171
Information re Heck Bankruptcy—Gallagher Document No. 8.....	321
<i>Marshall v. Equibank</i> , N.A. (W.D. Pa.), various memorandums: October 20, 1980—Backlog Document No. 5.....	165
October 21, 1980—Backlog Document No. 6.....	169
December 4, 1980—Backlog Document No. 7.....	170
<i>Marshall v. Schmoutey</i> —Paul Kouris, memorandum from Robert R. Bit-ticks to file, April 17, 1978—Kane Document No. 10.....	266
<i>Marshall et al. v. Schmoutey et al.</i> , memorandum from David Allen, attorney, Plan Benefit Security Division for Monica Gallagher, September 12, 1977.....	579
<i>Marshall v. Schmoutey et al.</i> , D. Nev., Civil No. CV-LV-77-47, RDF, Southern Nevada Culinary Workers and Bartenders Pension Trust, Case No. 72-6118, memorandum from Monica Gallagher for Ian Lanoff, April 5, 1978.....	468
Meeting concerning <i>Ray Marshall v. Equibank and Fourco Glass Company, Inc.</i> , memorandum from Willie M. Alexander to file, March 19, 1981—Backlog Document No. 10.....	178
Meeting re Southern Nevada Culinary and Bartenders Pension Trust, File 72-6118, July 13, 1978, memorandum—Kane Document No. 5.....	232
Meeting with the Office of Economic Development Administration ("EDA"), concerning Fourco Glass Company, Inc., memorandum from Willie M. Alexander to file, March 8, 1981—Backlog Document No. 9.....	176
Memorandum from Andrew E. Stevens to Morris A. Shenker, August 19, 1977 (with attachments) Young Document No. 1.....	367
Memorandum of Understanding Between the Departments of Justice and Labor Relating to the Investigation and Prosecution of Crimes and Related Matters Under Title I of the Employee Retirement Income Security Act of 1974.....	532
Mexico Sales, memorandum from Wolf Schanda to File, November 9, 1976—Document No. 1.....	4
Morris A. Shenker statement of assets and liabilities, December 31, 1976—Kane Document No. 4.....	220
Ohio Carpenters Health and Welfare Plan Case No. 53-11248, memorandum from Mervyn A. Schwedt, Acting Assistant Administrator for Enforcement to Ms. Monica Gallagher, Associate Solicitor, July 11, 1980—Backlog Document No. 10.....	181
Ohio Carpenters Health and Welfare Fund, Case No. 53-11248, memorandum from Alan D. Lebowitz, Acting Assistant Administrator for Enforcement, PWBP to Norman Goldberg, counsel for litigation, April 10, 1981—Backlog Document No. 14.....	188

Articles, publications, etc.—Continued

Ohio Carpenters Health and Welfare Plan, Case No. 53-11248, memorandum from Joseph D. Caiola, AA, Cleveland Area Office, to Assistant Administrator, Division of Enforcement, PWBP, May 7, 1980—Backlog Document No. 16	Page 193
Ohio Carpenters Health and Welfare Plan Case No. 53-11248, memorandum from Norman P. Goldberg, counsel for litigation, to Alan Lebowitz, Acting Assistant Administrator for Enforcement, June 17, 1981—Backlog Document No. 13	185
Ray Marshall, et al. plaintiffs vs. Ben Schmoutey, et al. defendants, court case of	514
Report of Interview of Paul Linden by the Department of Labor, April 7, 1977—Gallagher Document No. 5	306
Report of Investigation of the Southern Nevada Culinary and Bartenders Pension Trust Fund and Insurance Trust Fund of Employers and Unions, July 22, 1977	554
Southern Nevada Culinary and Bartenders Pension Trust Fund, Case No. 72-6118, memorandum from Edward F. Daly, Assistant Director, Division of Enforcement to Thomas F. Kane, Chief, Branch of Reporting Enforcement, March 4, 1977—Kane Document No. 3	217
Southern Nevada Culinary Workers and Bartenders Pension Trust, memorandum from Kenneth J. Marshall to J. Vernon Ballard, Deputy Administrator, April 2, 1979 (with attachments)—Kane Document No. 6	237
Southern Nevada Culinary Pension Trust Fund, memorandum from Kenneth L. Evans, Area Administrator to Edward Daly, Office of Enforcement, January 17, 1978—Gallagher Document No. 6	308
Southern Nevada Culinary Workers and Bartenders Pension Fund, Case No. 72-6118, memorandum from Thomas F. Kane, Chief, Division of Reporting Enforcement to Edward F. Daly Director, Office of Enforcement, March 21, 1978—Gallagher Document No. 7	316
Southern Nevada Culinary Workers and Bartenders Pension Trust Fund, Case No. 72-6118, memorandum from Thomas F. Kane, Chief, Division of Reporting Enforcement to J. Vernon Ballard, Deputy Administrator, PWBP, June 13, 1977—Document 14	356
Southern Nevada Culinary Pension Trust Fund, Case No. 72-6118, memorandum from Edward F. Daly, Director, Office of Enforcement, for J. Vernon Ballard, Deputy Administrator, February 1, 1978 (with attachments)—Lanoff Documents 1 and 2	430
Southern Nevada Culinary and Bartenders Pension Trust Fund (Case No. 72-6118), memorandum from Thomas F. Kane, Chief, Division of Reporting Enforcement, for Edward F. Daly, Director, Office of Enforcement, April 3, 1978	434
Southern Nevada Culinary Workers and Bartenders Pension Trust, memorandum from Kenneth J. Marshall for J. Vernon Ballard, Deputy Administrator, April 2, 1979 (with attachments)	436
Southern Nevada Culinary Workers and Bartenders Pension Trust Fund, memorandum from Edward F. Daly, Director, Office of Enforcement for J. Vernon Ballard, Deputy Administrator, June 3, 1977—Lanoff Document No. 5	499
Southern Nevada Culinary and Bartenders Pension Trust, File 72-6118, memorandum from Edward F. Daly, Director, Office of Enforcement for Ian D. Lanoff, Administrator, July 12, 1978—Lanoff Document No. 6	503
Southern Nevada Culinary and Bartenders Pension Trust, File 72-6118, memorandum from Thomas F. Kane, Chief, Division of Reporting Enforcement for Edward F. Daly, Director, Office of Enforcement, August 21, 1978	510
Southern Nevada Culinary Workers and Bartenders Pension Trust Fund, Case No. 72-6118, memorandum from Edward F. Daly, Director, Office of Enforcement for Thomas F. Kane, Chief, Division of Reporting Enforcement, June 24, 1977	523
Southern Nevada Culinary and Bartenders Pension Trust Fund, Case No. 72-6118, memorandum from Edward F. Daly, Assistant Director, Division of Enforcement for J. Vernon Ballard, Acting Administrator, FWBP: February 2, 1977	538
March 14, 1977	539

Articles, publications, etc.—Continued

Southern Nevada Culinary and Bartenders Pension Trust Fund, memorandum from J. Vernon Ballard, Acting Administrator for the Under Secretary, March 16, 1977.....	Page 541
Southern Nevada Culinary Workers and Bartenders Pension Fund, memorandum from Edward C. Kennelly for Frank Castaneda, Chief, BFSI, March 23, 1977.....	543
Southern Nevada Culinary Workers and Bartenders Pension Trust Fund, memorandum from Thomas F. Kane, Chief, Division of Reporting Enforcement for Edward F. Daly, Director, Office of Enforcement, June 4, 1977.....	545
Southern Nevada Culinary Workers and Bartenders Pension Trust Fund, memorandum from Edward F. Daly, Director, Office of Enforcement for J. Vernon Ballard, Deputy Administrator, June 10, 1977 (with attachment).....	547
Southern Nevada Culinary Workers and Bartenders Pension Trust Fund, memorandum from Thomas F. Kane, Chief, Division of Reporting Enforcement for Edward F. Daly, Director, Office of Enforcement, June 24, 1977.....	552
Southern Nevada Culinary Workers and Bartenders Pension Fund, memorandum from Thomas F. Kane, Chief, Division of Reporting Enforcement for Edward F. Daly, Director, Office of Enforcement.....	577
Southern Nevada Culinary Workers and Bartenders Pension Trust, memorandum from Edward F. Daly, Assistant Director, Division of Enforcement, for J. Vernon Ballard, Acting Administrator—OGH Document No. 1.....	725
Statement of Net Assets Available for Benefits of the Southern Nevada Culinary and Bartenders Pension Trust.....	682
Teamsters Local 299 Severance Plan (Madison Heights, Mich.), memorandum from Norman P. Goldberg, counsel for litigation, plan benefits security division to Alan Lebowitz, acting assistant administrator for enforcement, April 24, 1981—Backlog Document No. 3.....	154
Teamsters Local 299 Severance Plan (Madison Heights, Mich.), memorandum from Polly Dammann, attorney to Norman P. Goldberg, counsel for litigation, April 28, 1981—Backlog Document No. 4.....	160
Telephone conversation with Ian Lanoff re: Ken Marshall's Report on the Southern Nevada Culinary and Bartenders Pension Trust, Memorandum for the files, April 26, 1979—Stern Document No. 3.....	405
That's What's on the Agenda, Enrolled Actuaries Meeting, January 23 and 24, 1978, from the Journal of Pension Planning and Compliance, Vol. 3, No. 6, November 1977—Young Document No. 2.....	374
Thomas L. Karsten Associates Receipts, Expenses and Fees as Investment Manager for the Real Estate Related Assets of the Southern Nevada Culinary and Bartenders Pension Trust—Document No. 3.....	17
Trustees of the Southern Nevada Culinary and Bartenders Pension Trust et al, memorandum from Steven J. Sacher, Associate Solicitor, to the Solicitor, the Acting Administrator, March 21, 1977—Gallagher Document No. 1.....	286
Upper Avenue Bank Investment Manager of Southern Nevada Culinary and Bartenders Pension Trust, Final Accounting, May 2, 1979—Lanoff Document No. 3.....	477
Visit to LAAO, February 16, 1978, memorandum from J. Vernon Ballard, Deputy Administrator for Edward F. Daly, Director, Office of Enforcement, February 22, 1978.....	525
Communications to:	
Board of Trustees, Southern Nevada Culinary and Bartenders Pension Fund, from Earl Liever, Administrator, October 20, 1975 (with attachment).....	526
Burkhardt, Hon. Francis X., Assistant Secretary for Labor-Management Relations, Department of Labor, from Philip B. Heymann, Assistant Attorney General, Criminal Division, Department of Justice, November 6, 1978 (with attachment).....	349
Civiletti, Benjamin R., Assistant Attorney General, Criminal Division, U.S. Department of Justice, from Carin Ann Clauss, Solicitor of Labor, U.S. Department of Labor (with attachments).....	590
Donovan, Hon. Raymond J., Secretary, U.S. Department of Labor from Orrin G. Hatch, Chairman, Committee on Labor and Human Resources, June 12, 1981—Backlog Document No. 15.....	190

VII

Clauss, Carin Ann. Solicitor of Labor, from Benjamin R. Civiletti, Assistant Attorney General, Criminal Division, Department of Justice, April 25, 1977—Kane Document No. 9	Page 264
Hatch, Hon. Orrin G., Chairman, Committee on Labor and Human Resources, from:	
Dotson, Donald L., Assistant Secretary, Labor-Management Relations, U.S. Department of Labor, February 8, 1982 (with attachments).....	53
Shenker, Morris A., attorney at law, St. Louis, Mo.: January 22, 1982 (with attachment).....	279
February 16, 1982	281
Hoffmann, Martin R., Washington, D.C., from Ian Lanoff, Administrator, Pension and Welfare Benefit Programs, July 5, 1978	466
Nangle, James F., Jr., Esquire, law offices of Morris A. Shenker, from John Hardin Young, counsel for the secretary, March 10, 1981	385
Ohio Carpenters Health and Welfare Plan, Board of Trustees from Joseph D. Caiola, Area Administrator, U.S. Department of Labor, July 20, 1981	722
Reyna, Joseph, Department of Labor, from Harry J. McKinnon, M.D., McKinnon, Diagnostics, Limited, Las Vegas, Nev., March 6, ...	283
Roth, Herbert, Los Angeles, Calif., and Edward Horahan, III, U.S. Department of Labor, Washington, D.C., from E. Michael Murphy, attorney, law offices of Morris A. Shenker, May 23, 1980—Young Document No. 4	381
Vaira, Peter F., U.S. Department of Justice, from Geoffrey A. Anderson, special attorney, Las Vegas Strike Force Office, October 25, 1977 (with attachments).....	581
Selected tables:	
Debt owed to Southern Nevada Culinary and Bartenders Pension Trust from Shenker defendants in Donovan vs. Schmoutey, No. CV-LV-77-47 RDF	203
ERISA 406 Violations/Morris A. Shenker Related Entities as of March 30, 1977	200

LABOR DEPARTMENT ERISA COMPLIANCE

TUESDAY, FEBRUARY 23, 1982

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 9:35 a.m., in room 4232, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Hatch and Nickles.

OPENING STATEMENT OF SENATOR HATCH

The CHAIRMAN. Today we open what I expect to be a year-long series of hearings into the Labor Department's handling of enforcement cases involving abuse of union pension funds by corrupt union leaders, corrupt businessmen, and organized crime figures.

Our decision to initiate these hearings came last year when we discovered that the Labor Department had accumulated a backlog of 247 enforcement cases, many of which were becoming endangered by statute of limitations problems. We were concerned that an inordinately large number of these cases—163, to be exact—were closed out administratively in 1981.

The committee is not in a position at this time to say whether each and every one of these 163 cases should have been placed in litigation or referred to the Justice Department for prosecution. However, my staff has reviewed enough of them to determine that a common theme runs through all too many cases—that the Labor Department's Office of the Solicitor, which in other departments is known as the general counsel, has refused to act meaningfully, vigorously or in a timely manner against those who abuse these pension funds. This is true with respect to both Democratic and Republican administrations dating back to the Ford years.

Refusal by the Solicitor's Office to crack down on criminal elements was recently cited by the Senate Permanent Investigations Subcommittee as a major contributing factor to the problems that subcommittee found with the Teamsters Union Central States Pension Fund. The same problem has surfaced in my staff's investigation of the Southern Nevada Culinary Workers' Pension Fund case, which we will be looking into today and tomorrow.

From our preliminary work on other enforcement cases, it is a theme I expect will be aired more and more extensively in this hearing room as our inquiry proceeds throughout the year. The stakes are high. Currently there are more than 50 million workers in 560,000 pension plans, and the present value of those plans is

more than \$550 billion. We must insure that the Labor Department is adequately protecting these assets.

Let me say at the outset that I am not questioning the integrity of any Labor Department employee who has participated in these enforcement cases. We are simply looking at their job performance. And that level of performance has not been high with respect to protecting union pension fund assets which have been milked repeatedly by union leaders and outsiders, some of whom have reputed or well-known organized crime connections.

Those who would characterize these hearings or me personally as antilabor are mistaken, and they know it. It is time that someone spoke up for the rank-and-file union member whose hard-earned retirement income is being systematically stolen by certain union bosses, business figures, and professional racketeers.

Entrenched politicians with incestuous ties to dishonest union leaders will not protect those rank-and-file members. The Labor Department has not and will not protect them either. Both these forces have been traditionally alined with union leaders.

This, of course, is not to say that all or nearly all labor leaders are dishonest. Many are fine individuals. Nonetheless, the individual worker or retiree appears to be the forgotten man or woman in all this. I intend to do my best to protect them, even if others have not.

The immediate subject of our current hearings is the Labor Department's handling of the Southern Nevada Culinary Workers' Pension Fund enforcement case. The 30,000 workers covered by this fund have been cheated, both by Morris Shenker and the Labor Department. We are not talking about highly paid workers. The members of this union are people who make beds, wash dishes, tend bar, and the like. Many work at or around minimum wage level.

Between 1973 and 1977, corporations controlled by Morris Shenker or his family borrowed \$24 million from the culinary pension fund. Shenker is a well-known lawyer who for years represented Jimmy Hoffa. At one point in 1977 the \$24 million Mr. Shenker borrowed accounted for almost 65 percent of the fund's total assets of \$37 million.

These loans, or at least the \$15 million in loans made after passage of the Employee Retirement Income Security Act of 1974—often known as ERISA—were prohibited transactions under that act because Shenker was a party in interest. That was and is by virtue of his controlling ownership in the Dunes Hotel and Casino in Las Vegas, Nev., an employer that makes contributions to the pension fund. The \$9 million borrowed by Shenker prior to ERISA became subject to enforcement action because the loans are in default and have been since 1975.

Mr. Shenker ostensibly obtained this \$24 million in loans for developing two principal properties: Murietta Hot Springs, a spa and residential housing development in California; and Sierra Charter, a housing development in Nevada. However, as the years wore on it became apparent that Mr. Shenker was not putting that loan money into development of land that collateralized such loans, nor was he paying the money back as envisioned in the loan agreements.

I might add that, including principal and interest, Mr. Shenker currently owes the cullinary fund some \$45 million on the \$24 million in loans. The meter keeps running but at a rate extremely advantageous to Mr. Shenker under today's money market conditions. Interest rates on these loans range from 8 to 11 percent, a fraction of today's going rate. Every day that goes by without this case being resolved means another windfall for Mr. Shenker.

Let's look now at what Mr. Shenker did with the loan proceeds. I am reading from a March 14, 1977, Labor Department audit memo, as follows:

From the review of the fund's records it appears that there is a "milking operation" of the advances to Sierra by Shenker, in that this money is being siphoned off to other Shenker operations.

The money being advanced to Sierra by the fund was supposed to finance sales and marketing of the Murietta property. Some of this money was actually used to:

One, buy a building in Las Vegas for the Sierra operations.

Two, settle a defaulted loan of Stan Franklin, president of Sierra, against the Moapa Indians in the amount of \$300,000.

Three, acquisition of new land by Sierra, the Sal-la-Sea property in Oregon.

Four, advance \$796,872 to Sidney Wyman, a business associate of Shenker.

Five, advance \$121,476 for an option to purchase 564 acres of land near Lake Tahoe owned by Stan Franklin.

Six, HUD ordered suspension of sales by Sierra on July 7, 1975, until October 1, 1975. During this period of time, Sierra received \$2.2 million in "advances" for sales promotion work that was suspended by HUD.

At this point I would insert document No. 1 in the record, without objection.

[The material referred to follows:]

MEMORANDUM

*Committee
Document
#1*

TO: FILE
FROM: WOLF SCHANDA
DATE: NOVEMBER 9, 1976
SUBJECT: MEXICO SALES

*See 264 10-30-79
Hidman*

On November 4 and November 5, I took a trip to Mexico City together with our new Director of Mexican and Latin American sales, Mr. Fred Pericas. The trip was prompted by the news of a renewed downward fluctuation of the Mexican Peso, resulting in a very negative prognosis from our Mexican broker, Mr. Gerardo Welter regarding the future of our already executed sales in Mexico and our pending new sales as well.

Since I have harbored serious doubts concerning our Mexican sales in the past, I determined that this situation offered an opportunity for Sierra Charter to determine once and for all, whether the business in Mexico can be considered genuine or not.

An additional aggravating factor in this question was Mr. Lamoreaux's accounting of monies expended for commissions and expenses versus funds actually received from Mr. Welter, American Diversified and its predecessors. The total discrepancy accounted for by Mr. Lamoreaux was in the amount of \$807,298.30.

It was represented to me by Mr. Welter on the telephone that the second devaluation of the peso to approximately 26.5 pesos per dollar had resulted in an attitude of panic with his customers and Mr. Welter made it pretty clear to me that he expected his customers to take a loss on their equity rather than to make monthly payments roughly in twice the amount of the original payments before devaluation of the Peso.

In addition, he stated that he had to refund all downpayments on approximately \$1.8 million of business he had collected and was holding for processing. In the meantime it had come to my knowledge that other developers doing business in Mexico were offering cashout programs based on the before devaluation rate of the peso. Mr. Pericas' previous company, Padre Island Investment Corporation, apparently was successful in collecting more than \$3 million in cashouts. It appeared to me that, if other companies were so successful with this kind of a program, we at Sierra Charter should also benefit from such an offer, provided that (a) our customers were actually bona fide purchasers, and

(b) we were in a position to offer a program giving approximately the same discount as our competitors.

After consultation with Mr. Ashleman, Mr. Unruh and Mr. Shenker, it was determined to offer a discount program not to exceed 30% of receivables.

After negotiations with Mr. Welter in Mexico City, the following program was arrived upon:

(A) NEW BUSINESS

This business mainly consists of \$1.8 million worth of sales on which Welter had previously collected the downpayment and supposedly refunded the monies after the recent devaluation. In order to give these customers an incentive to reinstate their purchases we agreed to offer an exchange rate of 18 pesos for one dollar for cash sales or sales with minimum downpayments of 30% of the list price. Monthly payments can be prepaid at that rate of exchange if a minimum of 12 monthly payments (principal and interest) or multiples thereof are received. Based on a present exchange rate of 24.5 pesos per dollar, the discount amounts to 26.53%.

(B) Sierra Charter will accept cashouts on already processed business at the rate of 20 pesos per dollar. Purchasers also have the option to prepay monthly payments (principal and interest) at that rate of exchange with a minimum of 12 monthly payments at a time or multiples thereof. Based on the present rate of exchange of 24.5 pesos per dollar, the discount amounts to 18.37%.

It was agreed that this special offer will only be extended until November 30, 1976, in order to emphasize its importance. Naturally, the program is subject to immediate termination, should there be a further downward devaluation of the peso. All payoffs or partial payoffs are subject to acceptance by us. It was further agreed to by American Diversified dba Gerardo Welter, that all front or residual commissions payable to them and resulting from this special discount offer will also be discounted in the same amount as is offered to and accepted from the individual purchasers.

In my opinion, this program will benefit us one way or the other. At worst, if we receive no response from any of the purchasers while other companies are running similar programs successfully, we will know once and for all that because of the unprofessional broker agreement drawn by the previous administration of Sierra Charter, we have been had. It would then become imperative to minimize our losses and to try to resell the inventory as expeditiously as possible. ✓

On the other hand, if the program turns out to be successful, we will not only obtain large amounts of cash payoffs, but we will also be secure in the knowledge that at least a large portion of our previous sales were actually bona fide transactions.

It should be pointed out, however, that in checking the names of our customers and their transactions, it has become apparent that a considerable portion of sales were made to principals and associates of Welter's firm or their salesmen and can almost certainly be written off. At this point the dollar amount ascertained to be stemming from such transactions is approximately \$300,000 and it is likely that this figure will increase as our checking continues. ✓

The CHAIRMAN. Because of other liens on these properties and the generally unimproved state Mr. Shenker left them in before turning them over to investment managers, the collateral for the \$45 million in loans and interest is now estimated to be worth something less than \$11 million. This is according to an audit by the current investment manager for the fund, Mr. Karsten.

At this point we will insert document No. 2 in the record, without objection.

[The material referred to follows:]

18 JAN 1977

Edward P. Daly, Assistant Director
Division of Enforcement

Southern Nevada Culinary and Bartenders
Pension Trust Fund (WP #260536)
113 West New York Avenue
Las Vegas, Nevada 89102

*Committee
Document
#2*

To: Walter Slater, ARA for FWP
San Francisco Regional Office

This memorandum is to confirm a conversation between you and Tom Kane of my staff concerning the captioned subject on January 10, 1977.

On January 10, 1977, the Division of Enforcement was advised that plans should be made to conduct an audit/investigation of the above-captioned fund.

The investigation will be initiated by the assignment of two CO's from the San Francisco Region and two staff accountants from BRE, Division of Enforcement. SOL has assigned Attorney Dave Allen to assist with a legal analysis of this investigation and all the legal implications uncovered during this investigation for violations of ERISA.

The main thrust of this investigation will be towards the loans of over \$16 million to Morris Shanker by the subject fund. Information has been gathered that another \$16 million in loans has been committed to Shanker but has not as yet been disbursed. The propriety of such disbursement may be in violation of ERISA.

Attached is a very brief outline of our knowledge concerning Shanker.

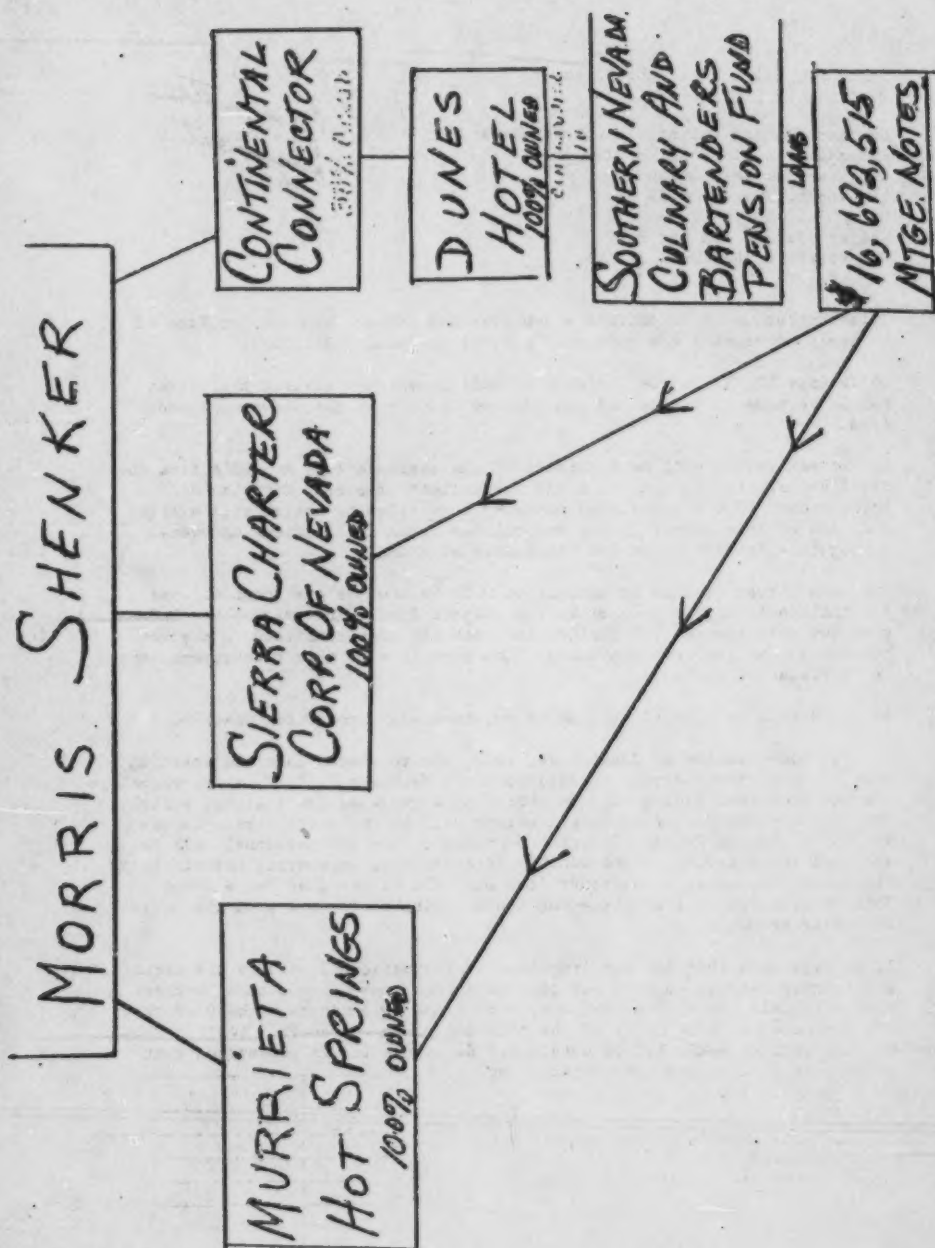
In your conversation of January 10, 1977, you requested that the starting date of this investigation be delayed until February 7, 1977, as personnel in the San Francisco Region will be attending a two-week IRS training school. You were advised that this investigation will be under the direct supervision of the San Francisco Region personnel. The BRE personnel will be assigned for a period of one month. If additional accounting assistance is necessary, two other accountants from BRE will be assigned for a month. This NO practice will continue until accounting assistance from the NO is no longer required.

It is requested that the San Francisco Region personnel perform the necessary preliminary details to commence this investigation - open a case, contact plan officials, motel reservations, etc. - and communicate with NO so that BRE personnel will be aware of the time and place to report. Contact should be made with CO Hackett to obtain all documents in his possession that pertain to Shanker and the subject fund.

Enclosure

cc: Los Angeles Area Office (info)
Dave Allen- SOL
Enforcement Kane Chron

FILED DATE, TIME	INITIALS	DATE
<i>File</i>	<i>[initials]</i>	<i>1/17/77</i>



Loan #1 To Murrieta Hot Springs (Murrieta)

Date - March 1, 1973

Amount - \$2,000,000

Interest Rate - 5% or 1% above prime rate which ever is greater -
not to exceed 10% per annumPayment Schedule - Interest payable monthly until April 1978 -
April 1978 onward, a payment of \$16,730 for interest
and principal due monthly. The entire loan is due
and payable on April 1983.

Collateral - Deed of Trust on approximately 209 subdivided lots.

Loan #1 - Modification - Murrieta (Sierra)

Date - July 1973

Amount - \$2,000,000

Modification - Sierra guaranteed to pay interest payments of Murrieta
for a period of 2 years.

Interest Rate - Not Stated - Presumed the same as original

Payment Schedule - Payment of this interest shall be by Sierra
assigning to the Trust third party mortgages or sales
agreements for real estate.Loan #2 - Murrieta

Date - July 30, 1973

Amount - \$5,000,000

Interest Rate - 9% - If prime rate is 7 1/2% or less the rate will be 8 1/2%

Payment Schedule - Interest payable monthly until March 1979 -
March 1979 onward - monthly payment \$44,990 for principal
and interest. The entire loan is due and payable on
March 1984.

Collateral - Deed of Trust on undeveloped land.

Loan #1 & #2 Modification - Murrieta & Sierra

Date - December 1, 1975

Amount - \$7,363,125

(Note: All sums due & owing the Trust by Murrieta at 12/1/75 are
to be treated as principal-\$7m principal - \$363,125 interest.)

Interest Rate - 10%

Payment Schedule - Any interest that becomes due and unpaid shall become
principal and bear interest as principal of the rate of
10%.

NOTE:

Unaudited financial statements of Murrieta as at Sept. 30, 1975
indicates a net capital deficiency of \$19,125,000 and a cumulative
loss from operations of \$17,615,000 from 12/31/70 - 9/30/75.

Loan #1 To Sierra

Date - June 7, 1975

Amount - \$8,000,000 (only \$7,450,000 advanced)

Interest Rate - 11% or 1% above prime rate not to exceed 11% nor less than 9%.

Payment Schedule - Interest payable monthly. The unpaid principal balance is payable in five equal consecutive annual installments commencing five years from the final advancement on the loan (5-15-75).

Collateral - Deed of Trust on approximately 1360 lots and undeveloped land located within the Gardnerville Ranchos Improvement District, Gardnerville, Nevada.

Loan #1 Modification To Sierra

Date - July 1975 (all to be advanced by 12-31-75)

Amount - \$1,350,000 additional

Interest Rate - 11% or 1% above prime rate not to exceed 11% or below 9%.

Payment Schedule - Repayment of the sums advanced under this modification agreement, together with interest thereon, shall be made by assignment of third party mortgages and sales agreements, discounted to yield the interest rate of the loan.

Collateral - Trust is to receive all third party mortgages and sales agreements generated by SIERRA as additional collateral, until such time as mutually agreed, to apply against payment of principal and interest.

Loan #1 Modification To Sierra

Date - December 1, 1975

Amount - Principal - \$8,800,000. (\$7,450,000 + \$1,350,000)

Interest - 346,578. (payable to Trust)
\$9,146,578

Interest Rate - 11%

Payment Schedule - Both principal and interest shall be treated as principal. Any interest which is due and unpaid shall become principal bearing 11% interest. Repayment shall be in accordance with the terms of the loan agreement dated 6-7-74 and the modification of July 1975.

Loan #2 to Sierra

Date - May 25, 1976

Amount - \$2,450,000

Interest Rate - Prime rate not to exceed 10% nor less than 6%.

Payment Schedule - Due on Demand, or if no demand is made there are monthly installments beginning on 7/25/76 in the amount of \$110,000 including interest.

Collateral - In connection with the guarantee by the Trust, Valley Bank of Nevada relinquished the collateral which it held for the pre-existing debt which included a trust deed on certain pieces of construction equipment, capital stock in Carson Valley Country Club, Inc., and Swift Construction, Inc., and 47 third party mortgages or sales agreements on real estate. Sierra pledged this collateral to the Trust.

Loan #3 to Sierra

Date - Between 1/1/76 and 6/30/76

Amount - \$3,650,000

Interest Rate - 11% (Note:- this additional loan was made under the loan modification agreement dated 12/1/75.)

Payment Schedule - Unpaid interest of \$538,628 was added to receivable from Sierra and \$358,514 was added to receivable from Murrieta.

Collateral - Sierra - approximately 1000 of the original 1360 lots, and third party mortgages or sales agreements having an unpaid balance of approximately \$1,700,000.

Murrieta - sold approximately 180 lots and assigned to the Trust as substitute collateral third party mortgages with an unpaid balance of approximately \$3,400,000.

NOTE: On 12/1/75 the Trust loaned Sierra \$60,000 but DOL has no details concerning this loan.

Letters of Credit issued to Sierra by Trust

- (1) Date - July 24, 1975
Amount - \$270,275
To - Nevada State Bank
For - Continental Telephone Co. of Nevada
Irrevocable letter of credit #197520
- (2) Date - July 29, 1975
Amount - \$224,953
To - Nevada State Bank
For - Continental Telephone Co. of Nevada
Irrevocable letter of credit #197519
- (3) Date - November 18, 1975
Amount - \$1,100,000
To - Valley Bank of Nevada
For - Argonaut Insurance Co. of California -
Irrevocable letter of credit #339

The Trust agreed to lend Sierra additional sums for the following purposes:

- (1) to develop and sell its real property
- (2) to meet its corporate obligations
- (3) to provide the necessary day to day operating capital
- (4) to develop a sales marketing and development program for Murrieta's real property assigned to the Trust as collateral for the loans.

Sierra estimated that in order to accomplish the above it will need an additional \$16,600,000 during the 3 year period ending September 30, 1978. This amount will be used as follows:

\$	8,400,000-Commissions and other selling expenses
	3,100,000-Improvements to the real property
	1,800,000-General and administrative
	2,800,000-Payment of existing indebtedness (Not to Trust)
	<u>500,000-Real property taxes and assessments</u>
\$	<u>16,600,000-Total</u>

Sierra estimates \$29,700,000 in third party mortgages and sales agreements (net of down payments) during the 3 years ending 9/30/78, all of which are to be assigned to the Trust.

Sierra agreed to guarantee all debts of Murrieta to the Trust.

Shenker guaranteed all previous loans to Sierra by the Trust.

Shenker guaranteed any additional funds advanced to Sierra.

Sierra's financial statements by an independent accountant for the FYE April 30, 1975 disclosed the following information:

- (1) Sierra borrowed \$7,050,000 from the Trust during this period and disbursed \$5,300,000 to its affiliates and associates of Shenker.
- (2) Sierra had a net capital deficiency of \$4,016,531 and a cumulative loss from operations of \$4,073,231.
- (3) The collection of the following receivables qualified the statement:
 - (a) \$1,729,699 from Murrieta
 - (b) \$116,696 from a company owned by Shenker
 - (c) \$766,195 from a company owned by Shenker
 - (d) \$796,572 from a business associate of Shenker
 - (e) \$111,400 from an officer of Sierra

The continuation of the company as a going concern is dependent upon future developments including Sierra's ability to pay its liabilities as they become due, to obtain adequate financing, to obtain an effective Property Report from the Office of Interstate Land Sales Registration of the U.S. Department of Housing and Urban Development, and to sell its real estate at substantial profits.

Basis for Action by DOL

(1) Morris Shenker is a party-in-interest because the Dunes Hotel employs participants of the Southern Nevada Culinary & Bartenders Pension Fund (Trust) and is a contributing employer to the Trust. The Trust has entered into loan agreements of over \$16,000,000 with corporations that are 100% owned by Shenker and his family.

(2) There is an apparent agreement by the Trust to provide additional loans in the amount of \$16,600,000 during the three year period ending September 30, 1978.

Plan of Action by DOL

(A) Audit the books and records of the Southern Nevada Culinary and Bartenders Pension Fund (Trust) with emphasis on the loans and mortgages and notes.

(1) This is necessary to follow the flow of money to and from Shenker's operations.

(2) The Trustees of the Trust may be in violation of their fiduciary duties as "prudent men" in approving these loans to Shenker's operations.

(3) Ascertain if one Trustee, namely Al Bramlet, was the driving force in securing these loans for Shenker.

(4) Delve into the collateral utilized in obtaining these loans - appraisals, liens filed on property, etc. - again "prudent man" rule.

(B) Audit the books and records of Murrieta and Sierra to follow the flow of the loan funds to their ultimate sources.

(1) Proper use of funds received from Trust.

(2) Possible kick-back arrangements for these loans.

(C) Review real estate record to ascertain that liens are filed by Trust and no other liens filed on property by other parties.

(1) This will assist in ascertaining that the collateral is not being used more than once.

—(D) Conduct other investigation deemed necessary as a result of A, B, and C.

The CHAIRMAN. Rather than opting for criminal prosecution on various fraudulent aspects of these loans, the Labor Department's actions have been strictly confined to the civil track. They did file a civil suit against the union trustees and Shenker in March 1977, but that suit has yet to come to trial. In fact, this case has not even been assigned a trial date as of today.

The Solicitor's Office could have avoided this long delay by cooperating with the Justice Department in a criminal prosecution which undoubtedly would have put pressure on Mr. Shenker to settle the civil claims against him. Also, the Department could have—and I think should have—moved on the civil side for a preliminary injunction which could have bankrupted some or all of Shenker's corporations.

Under Nevada Gaming Commission practices, such a bankruptcy could have cost Shenker his gambling license. Would he have allowed that to happen? I doubt it. I expect he would have paid off the loans, putting back the money he has taken from these working people, had the right amount of Federal pressure been brought.

Now this is just one union. There are indications that Shenker has had \$160 million or thereabouts just from the Teamsters. He took \$24 million from the Culinary Union—now \$45 million with interest—\$160 million from the Central States Teamsters pension program, \$11.5 million from local 562, the pipefitters' fund in St. Louis, and he settled that with a land net value after encumbrances of about \$2 million.

There is yet another element in Labor's bizarre handling of this case. Rather than pressuring the fund trustees to call in Shenker's loan guarantees, the Department allowed appointment of two investment managers who proceeded to spend more than \$13 million of the fund's assets over the last 4 years in an effort to shapeup the Shenker properties to the extent that they could be sold.

Some of these expenditures seem to be outrageously excessive. For instance, the first of these investment managers, Upper Avenue Bank of Chicago, spent \$1.2 million to bail out a \$3,000 investment by Shenker. There is a danger that most if not all of this additional investment will be lost to the fund. Among expenditures of the current investment manager, Thomas Karsten Associates of Los Angeles, are \$1.2 million in legal fees and \$1.3 million in Karsten's own management fees over that period.

Without objection, we will put document No. 3 in the record at this point.

[The material referred to follows:]

Document #3

THOMAS L. KARSTEN ASSOCIATES
 RECEIPTS, EXPENSES & FEES
 AS INVESTMENT MANAGER FOR THE REAL ESTATE RELATED ASSETS
 OF THE SOUTHERN NEVADA CULINARY AND BARTENDERS PENSION TRUST

The principal activities of Thomas L. Karsten Associates have related to clearing title of properties, establishing priority over competing claims, negotiating and settling with holders of prior claims, discharging property from the Murrieta Hot Springs bankruptcy, defending and forstalling contingent liabilities, completing subdivision improvements at the Gardnerville Ranchos in Nevada, otherwise fulfilling subdivision agreements, enforcing agreements with contractors, obtaining various approvals from local governmental bodies and prosecuting claims against third parties, including claims in excess of \$40,000,000 against Sierra Charter Corporation of Nevada and Morris Shenker. Thus, the expenses do not in large part relate to the receipts, but rather to the activities described below.

I. RECEIPTS
MAY 2, 1979 TO NOVEMBER 30, 1981

Lot Paper Collection	\$ 489,745.00 /1
Sale of Capital Energy Corp. Stock	50,153.00
Sale of Carson Valley Country Club Stock	175,000.00
Sale of Salmon River Parcel - Oregon	29,503.00
Lot Paper Foreclosure Sales	57,969.00
Miscellaneous Murrieta Income	1,296.00
	<u>\$ 803,666.00 /2</u>

/1 This amount does not include payments to General Electric Credit Corporation and other holders of prior liens on the lot paper. The prior lien holders received a total of \$847,736.00.

/2 A sale of the Murrieta 563 acre parcel is in escrow for a price of \$5,086,980.00.

THOMAS L. KARSTEN ASSOCIATES - RECEIPTS, EXPENSES & FEES

II. EXPENSES OTHER THAN ATTORNEYS FEES & COSTS
NOVEMBER 7, 1978 TO NOVEMBER 30, 1981 /3GARDNERVILLE RANCHOS, (NEVADA)

Improvement Cost	\$1,260,731.00
Engineering	215,316.00
Taxes and Assessments	1,599,424.00
Interest on \$3,600,000 Valley Bank Loan	959,773.00
Interest on \$1,663,476 Sierra Charter/Valley Bank Note	430,681.00
Foreclosure Expense	8,533.00
Payments on Prior Liens	178,614.00
Title, Escrow and Closing Costs	4,769.00
Appraisers	14,226.00
Other Professionals	17,495.00
Travel and Incidental Expense	24,958.00
	<u>4,714,520.00 /4</u>

MURRIETA HOT SPRINGS, (CALIFORNIA)

Taxes and Assessments	559,230.00
Improvement, Maintenance and Security Costs	99,523.00
Homeowner's Association Dues	43,991.00
Settlement with Bankruptcy Trustee	75,060.00
Foreclosure Expense	30,220.00
Title, Escrow and Closing Costs	51,202.00
Appraisers	23,837.00
Other Professionals	671.00
Travel and Incidental Expense	4,399.00
	<u>888,073.00</u>

TIMBERSHORE, (OREGON)

Taxes and Assessments	32,207.00
Payments on Prior Liens	646,747.00
Engineering	133,323.00
Title, Escrow and Closing Costs	3,234.00
Appraisers	13,701.00
Travel and Incidental Expense	16,413.00
	<u>845,625.00</u>

- /3 Thomas L. Karsten Associates assumed responsibility as investment manager as of May 2, 1979. Pursuant to its contract it was reimbursed for its expenses after November 7, 1979, the date its proposal to act as investment manager was accepted by the Trustees.
- /4 This does not include \$3,600,000 borrowed from Valley Bank of Nevada by the predecessor investment manager pursuant to agreements among Upper Avenue Bank as investment manager, Valley Bank and M. Paul Heck, et al in respect of the Gardnerville property. The loan was used to pay \$600,000 in delinquent assessments and \$3,000,000 in improvement costs.

THOMAS L. KARSTEN ASSOCIATES - RECEIPTS, EXPENSES & FEES

II. EXPENSES OTHER THAN ATTORNEYS FEES & COSTS
(Continued)

ELEPHANT BUTTE, (NEW MEXICO)

Taxes and Assessments	\$ 26,038.00
Foreclosure	395.00
Elephant Butte Golf Course Maintenance	119,094.00
Elephant Butte Golf Course Equipment Purchase	40,000.00
Advertising	2,854.00
Title, Escrow and Closing Costs	2,079.00
Appraisers	5,096.00
Travel and Incidental Expense	5,837.00
Engineering	8,033.00
	209,426.00

PROSSER HEIGHTS, (CALIFORNIA)

Taxes and Assessments	7,097.00
Engineering	5,376.00
Parcel Map Fees	1,055.00
Payment on Prior Liens	10,000.00
Title, Escrow and Closing Costs	1,113.00
Appraisers	1,200.00
Travel and Incidental Expense	294.00
	26,135.00

Lot Paper Collections Office	100,072.00
Paralegal	60,919.00
Accountants Fees	20,829.00
Insurance	27,575.00
Reporters Fees	6,884.00
TLKA travel not allocated to specific properties, long distance telephone, photocopying, and other reimbursables.	71,748.00
Miscellaneous	11,300.00
TOTAL	\$5,983,106.00

THOMAS L. KARSTEN ASSOCIATES - RECEIPTS, EXPENSES & FEES

III. ATTORNEYS FEES & COSTS

Law Firms	Litigation and Public Approvals	Other Legal Services	Costs	Total
Friedman, Edward	\$ 525.00			\$ 525.00
Hale, Lane, Peek, Dennison & Howard	300.00	\$ 3,029.00		3,329.00
Highsaw, Mahoney and Friedman	8,126.00	5,024.00	\$ 401.00	13,551.00
Hoge, Fenton, Jones & Appel, Inc.	24,000.00		1,606.00	25,606.00
Levy & Erens	281,931.00	31,127.00	51,667.00	364,725.00
McCune, John J.	4,837.00	822.00	323.00	5,982.00
Mitchell, Silberberg & Knupp	504,147.00	76,476.00	56,990.00	637,613.00
Redwine & Sherrill	4,099.00			4,099.00
Robinson, Stevens & Wainwright	58,505.00	965.00	3,079.00	62,549.00
diak, George	2,358.00		420.00	2,778.00
utan & Tucker	23,951.00		1,155.00	25,106.00
Stewart & Horton	3,834.00		16.00	3,850.00
Tonkon Torp, Galen, Marmaduke & Booth	36,619.00	27,008.00	1,744.00	65,371.00
Woodburn, Wedge, Blakely, Folsom & Jeppson	5,758.00		712.00	6,470.00
	<u>\$958,990.00</u>	<u>\$144,451.00</u>	<u>\$118,113.00</u>	<u>\$1,221,554.00 /5</u>

/5 Includes approximately \$50,000 incurred by predecessor investment manager, Upper Avenue Bank.

THOMAS L. KARSTEN ASSOCIATES - RECEIPTS, EXPENSES & FEES

IV. FEES PAID TO THOMAS L. KARSTEN ASSOCIATES AS INVESTMENT MANAGER

TOTAL FEES

\$1,358,333.00

The CHAIRMAN. Again, all these expenditures probably would have been unnecessary had the Labor Department simply moved for a preliminary injunction or prevailed on the trustees to call Shenker's loan guarantees in 1977. Now we are faced with years of prolonged litigation unless the case is settled out of court. Documents in my possession indicate Mr. Shenker wants to settle the entire tab for \$21 million. Labor last year suggested \$19 million, a figure I regard as substantially inadequate.

Again, Labor blatantly is coddling Morris Shenker. I hope the Department will not settle for 1 penny less than Mr. Shenker owes. If it does, it will have substantial problems with this committee, at least as long as I am chairman.

Our first witnesses today are Messrs. Timothy Ryan, the present Solicitor of Labor, and Jeffrey N. Clayton, Administrator of the pension welfare benefits program.

In all fairness, Mr. Ryan, I must say that the problems that have surfaced in the Culinary Workers case are not of your making. You inherited them. We are focusing on the Culinary Workers matter only because some of the key decisionmakers and their proteges who performed so poorly in this case are still employed by the Department, and still espousing the theory of prolonged civil litigation instead of more rapid civil remedies or criminal prosecution.

I am well aware that some witnesses today will argue that ERISA does not provide criminal sanctions against prohibited transactions such as the Shenker loans. That is true. It does not. Notwithstanding that defect in ERISA, however, there were plenty of other criminal approaches available in title 18 of the United States Code and possibly elsewhere.

However, these approaches were not taken because the Solicitor's Office wanted to work the civil side first. Advocates of this approach prevailed, to the detriment of every member and every retiree of the Southern Nevada Culinary Workers' Pension Fund. Keep in mind again that these people do not make a lot of money. Many make the minimum wage or a little bit better. At least that is my understanding. Even if they did make average union wages across the country, it is still a colossal ripoff from what we have been able to find.

Five years after this case was filed, the statute of limitations has run on many alleged criminal violations. Shenker still has not paid anything back, and the civil trial has not even begun. I personally find this all unacceptable. I just do not understand how it could happen. If nothing else comes out of this hearing, I hope this philosophy of exhausting the civil remedies before you prosecute criminal violations will change. I also feel that if these facts turn out to be true, we ought to amend ERISA to provide for criminal prosecution.

While I cannot fault Mr. Ryan on his handling of the Culinary Workers case, I will have a number of questions for him about last year's 247-case enforcement backlog and the manner in which 163 of those cases were shut down administratively.

Now let me turn to my colleague from Oklahoma, Senator Nickles, at this time, and then I will introduce our witnesses.

OPENING STATEMENT OF SENATOR NICKLES

Senator NICKLES. Thank you, Mr. Chairman.

I want to commend you for exposing some of the past inactivity of the Labor Department and hopefully initiating more prompt and active consideration in cleaning up some of these past cases, and prosecution and turning them over to the judiciary as soon as possible.

Again I say thank you for that. I do have a couple of questions I would like to ask of the Solicitor and others as we go on.

The CHAIRMAN. All right.

Our witnesses today will be Mr. Ryan, Mr. Clayton, Ms. Gallagher, and Mr. Young. Would you all stand and be sworn?

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RYAN. I do.

Mr. CLAYTON. I do.

Ms. GALLAGHER. I do.

Mr. YOUNG. I do.

Mr. LEBOWITZ. I do.

The CHAIRMAN. Thank you.

I would like to turn to you, Mr. Ryan, and we will start with your testimony.

Mr. RYAN. Mr. Chairman and Senator Nickles, I would like to fully introduce everyone here. All the way to my right is Alan Lebowitz. Alan is the Acting Assistant Administrator for Enforcement of the pension and welfare benefit program. To my direct right is Mr. Clayton, who is the Administrator of the pension and welfare benefit program. To my left is Jack Young. He is the chief trial lawyer in the *Donovan v. Schmoutey* Culinary Workers case. To the far left is Monica Gallagher, who is the Associate Solicitor for Plan Benefits Security.

The CHAIRMAN. What we will do, Tim, we will proceed with yours, Mr. Clayton's, and Ms. Gallagher's statements and then have some questions, and then we will proceed after that with Mr. Young.

Mr. RYAN. If it is appropriate, Mr. Chairman, I would like to ask Mr. Young, at the end of my statement and Mr. Clayton's, to give you just a factual predicate on the *Schmoutey* case. It will be very short.

The CHAIRMAN. OK. If we could do that later, I think we will do it later. Let's get into this first and then we will have him do that. Go ahead.

Mr. RYAN. Whatever is your pleasure.

The CHAIRMAN. OK. Thanks.

STATEMENT OF T. TIMOTHY RYAN, JR., SOLICITOR OF LABOR, U.S. DEPARTMENT OF LABOR

Mr. RYAN. Mr. Chairman and members of the committee, it is a pleasure for us to come before you to discuss the Department of Labor's enforcement of the Employee Retirement Income Security Act, ERISA, and specifically our involvement in litigation relating to the Southern Nevada Culinary and Bartenders Pension Trust Fund. We will first address our overall approach to ERISA enforce-

ment, and then we will discuss the litigation of the case, which is formally titled *Donovan v. Schmoutey*. Following our statement, Mr. Young, the lead attorney in the case, will discuss some of the specifics of the case if you feel that that is appropriate at that time.

However, before we begin our presentation, I would like you to know that we at the Department of Labor, especially Secretary Donovan, Mr. Clayton, and myself, applaud your efforts, Mr. Chairman, to provide thorough and responsible oversight regarding our ERISA activities.

The statute was enacted in 1974 and there have since been a number of legislative modifications. However, during this period there have never been major oversight hearings on ERISA enforcement such as those you are now conducting. The Department of Labor welcomes your review of our actions.

We realize the enormous responsibility which was given to us by enactment of ERISA. At present there are some 50 million workers in 560,000 pension plans, and perhaps three times that number of workers and beneficiaries in the 4.5 million welfare plans in the country. The present value of pension plans is valued at \$560 billion, and this is estimated to escalate to an astronomical \$3 trillion in 1995, a mere 13 years from now.

This is a tremendous number of people and a tremendous amount of money. Our responsibilities are awesome, but we will take every action possible to insure that the participants and beneficiaries of all of these funds, both union and nonunion, are protected.

This is an important point to make, Mr. Chairman. By your review and oversight of the ERISA program, you are doing a service to all the beneficiaries and participants of all plans. You are exercising your oversight responsibility to review our enforcement responsibility. These obligations go hand in hand, and through this cooperative effort the millions of workers who participate in or who will benefit from employee benefit plans should be assured that we are doing our utmost to afford them their statutory protections.

Therefore, we applaud your leadership, Mr. Chairman, and we look forward to a continuation of our cooperative efforts.

I would now like to ask Mr. Clayton to run through the general enforcement program we have, and then I will take up the specifics of the *Schmoutey* case, Mr. Chairman.

STATEMENT OF JEFFREY N. CLAYTON, ADMINISTRATOR, PENSION AND WELFARE BENEFIT PROGRAM, U.S. DEPARTMENT OF LABOR

Mr. CLAYTON. Mr. Chairman, because the Culinary Workers case is now in the litigation stage, I believe it would be more appropriate for Mr. Ryan to address the Department's involvement in that proceeding. I would like to take a few minutes, however, to discuss what we are doing in the Department to assure that ERISA enforcement receives top priority and the attention that it deserves.

As you are aware, enforcing ERISA is a massive job. We have less than 200 investigators nationwide, although, as Mr. Ryan

stated, there are 560,000 pension plans and 4.5 million welfare plans. However, in the short time that I have been the Administrator for pension and welfare benefit programs, I have found that our investigators are high-caliber professionals who work hard at their jobs and are dedicated to protecting plan participants' and beneficiaries' rights.

We have been working hard to improve our enforcement efforts in both the civil and criminal areas. We are undertaking a complete review of our enforcement activities and I have already implemented certain changes. I believe that more emphasis needs to be placed on enforcement than has been in the past. American workers deserve to have their pension benefits protected in the same fashion as you or I would like to have our own benefits protected.

In the last few weeks I have visited three of our six regional offices to discuss with the staff the need to increase our emphasis on detecting criminal violations of ERISA, and other changes as well. I can assure you that the field staff is eager to participate in an increased enforcement effort. I intend to visit the remaining three offices in the very near future.

One of the most significant improvements we have made is the increased authority given to our field staff. In the future they will be able to take substantially more actions without obtaining prior approval from Washington, and they will be expected to actively seek voluntary compliance on all cases deemed appropriate before referring a case to the national office.

The field will be allowed to enter into voluntary compliance negotiations in cases with monetary claims of up to \$500,000, as compared to the previous limit of \$150,000. Also, investigators will be allowed to advise plan administrators of their preliminary findings. These changes should allow more cases to be processed, thus increasing our enforcement impact.

In addition, the Solicitor has established a pilot program in the San Francisco regional office to determine the feasibility of decentralizing ERISA litigation. These actions will enhance the visibility of the Department around the country, rather than have it concentrated in Washington.

Further, as he will discuss momentarily, the Solicitor has changed ERISA litigation strategy from one which placed emphasis on establishing legal precedents to a more enforcement-oriented mode. Accordingly, the number of ERISA litigators will be substantially increased.

Unfortunately, in the past a number of plan fiduciaries may have thought that they could avoid compliance with the statute because the chances were good that the Department would not sue. It has sometimes been difficult for the Department to achieve voluntary compliance or settlement because of a perceived lack of substantial threat of litigation.

However, these people can no longer proceed on the expectation of limited litigation. We intend to enforce the law and enforce it vigorously. More lawsuits will be brought and we will not hesitate to commit the necessary resources to conduct and complete investigations and the litigation of significant cases.

We place a high priority on targeting cases for investigation. Unfortunately, our ability to target cases by computer is still quite unsophisticated. This has been, I believe, one of the major weaknesses in our program. We are looking at ways to improve the situation.

One possibility is that we are receiving the wrong information from our annual reports. Although I recognize the burden placed on the submitters of the annual report, I believe that it is an important and necessary enforcement tool but perhaps not in its current form. We are undertaking an analysis to determine what information currently in the annual report is useful and what is not. At the same time we are trying to determine what additional information we should request to step up our enforcement capability.

Our program has been primarily civil in nature and we have concentrated our efforts to a great extent in the fiduciary area. However, as Secretary Donovan has emphasized to this committee and the Permanent Subcommittee on Investigations, we believe our investigators should be more active in detecting potential criminal violations of the statute.

Much greater emphasis is being placed on our obligation to provide the Department of Justice and other law enforcement agencies with any information we uncover which might warrant consideration for possible criminal prosecution. We will propose changes in our enforcement procedures and additional training for investigators to assure more and better criminal leads are referred to the Justice Department. We are currently holding discussions with the Justice Department as to the best method of accomplishing these objectives.

We have a large task in front of us. However, I believe we have made a promising start, and we anticipate other significant changes in our enforcement program to assure compliance with ERISA. We take our duties and obligations seriously.

The CHAIRMAN. I want to compliment you, Mr. Clayton and Mr. Ryan, for the efforts you are making to take your obligations seriously. I think it is long overdue, to be honest with you.

Mr. CLAYTON. Thank you.

The CHAIRMAN. You are going to go into the *Schmoutey* case now for 1 minute?

Mr. RYAN. Yes, sir.

Before I discuss the Culinary Workers litigation in detail, Mr. Chairman, I would like to give you a general overview of our ERISA litigation. At the beginning of 1981 we had 54 ERISA cases in litigation and 185 others were awaiting disposition—cases which had been referred to us for a decision as to whether we should proceed to litigation.

At the end of the year, the number of cases which were in litigation had grown to 77. There were only 26 matters awaiting disposition at the end of calendar year 1981. I am proud of this record, and I think it clearly demonstrates the importance we place on ERISA enforcement.

The Culinary Workers case is one of the major ongoing cases which has been brought under ERISA. In this litigation the Department alleges that the trustees and others violated the fiduciary responsibility and prohibited transactions provisions of ERISA in the negotiation and management of a series of loans.

I would note at the outset that the Culinary Workers local which cosponsors this plan is the largest labor union in the State of Nevada. The plan's current assets exceed \$100 million and there are at present approximately 30,000 participants in the plan. We believe the litigation we have brought is necessary to secure the viability of the plan to protect the rights and funds of these participants.

I believe it would be helpful for the committee for me to outline for you the history of our involvement in the case, from the initiation of the investigation to the present status of the litigation.

Beginning in 1973, the trustees of the fund committed the plan to a series of loans to Murrieta Hot Springs, Inc. and Sierra Charter Corp. of Nevada, two land-developing companies which were owned or controlled by Morris Shenker. These initial loans total approximately \$14.5 million. They were secured by a Murrieta project near San Diego, Calif., and property being developed by Sierra near Lake Tahoe, Nev. In 1975 the fund entered into two modifications of the original agreements in which additional loans were committed to finance ongoing operations of the two businesses.

The Department learned of the loans in late 1976 and then began its investigation of the fund. The basis of the investigation was the allegation that the loans were seriously delinquent and inadequately secured. The Department initiated an intensive and expedited investigation and concluded that the allegations were true, and that they involved a violation of the fiduciary responsibility provisions of ERISA. It was also discovered that the plan was continuing to make large disbursements—in the range of \$500,000 per month—to the Shenker-owned and controlled companies, and we believe these also violated the statute.

The Department believed that the situation was of such a serious nature that immediate action was necessary. Therefore, a complaint was filed on March 30, 1977, in which it was alleged that: One, the trustees acted imprudently in their negotiations regarding the modifications of the loans and their continued management; two, the trustees failed to diversify the plan's assets because approximately 60 percent of the entire assets were committed to these loans; three, the trustees violated the prohibited transaction provisions of ERISA because the loans benefited Mr. Shenker who because of his ownership of the Dunes Hotel—which is a contributing employer to the plan—is a party-in-interest with respect to the plan under the statute.

The complaint sought a permanent injunction against ERISA violations, removal of the trustees, and restoration of plan funds by certain former and then present trustees, and rescission of the loans and recovery of all moneys loaned to Mr. Shenker and his companies.

In addition, because the actions of the trustees were considered to seriously jeopardize the funds of the plan, a preliminary injunction was sought at the same time to stop the ongoing disbursements, to remove the trustees, and to provide for the appointment of a receiver. In response to this motion, the trustees agreed to the appointment of an independent asset manager to handle the plan's

real estate assets and pledged collateral which had grown to include interests in real estate in several States.

In August 1977, the Upper Avenue Bank of Chicago, Ill., was appointed as the asset manager. They filed an asset management plan in March 1978 which sets forth, as the name of the document indicates, their intentions of how to manage the assets.

In May 1979, Upper Avenue Bank voluntarily resigned and was replaced by Thomas L. Karsten Associates, a Los Angeles real estate consulting firm. The firm continues today to act as the independent asset manager.

Mr. Chairman, at the time the Department commenced the legal action, all of the loans in question totaled approximately \$27.25 million. As of the end of 1981, the present asset manager estimates that the amount of the loans with accrued interest has grown to \$45.2 million. However, the collateral held by the plan to secure the loans is estimated at only about \$11 million.

The litigation of the case has been lengthy and complex. At its inception the suit named as defendants only the trustees and Mr. Shenker and his companies. However, these individuals have attempted to shift their liability by the use of third-party complaints, and there are now approximately 20 parties to the action.

I would also point out that we have gathered over 500,000 documents in the discovery phase of the case. In addition, numerous people have been deposed and their combined depositions total over 30,000 pages. This is a voluminous amount of paper and information. Discovery has been extended by the court on numerous occasions. However, we have asked the court to set a firm trial date and we are hopeful that the case will proceed accordingly.

Mr. Chairman, I am aware that there has been some criticism of the fact that it has taken so long to bring this matter to trial. However, based on the complexity of this case and the huge amount of evidence which has been amassed, this should not be at all surprising. I think you would find that cases in this and other areas of the law of similar size and complexity also take a long time to come to trial. Nevertheless, I agree that 5 years is a long time for this to have dragged out, and I sincerely hope that the court will grant our request to set a trial date very soon.

It has also been alleged that the Department has not devoted enough resources to this case. I do not intend to sit in judgment on the actions of my predecessor but I will tell you that I am committing the resources which are necessary to bring this case to a successful completion.

We presently have four attorneys working on this case virtually full time. As I have indicated previously, the lead attorney is Jack Young, who came to the Department from private practice where he worked for the firm of Blank, Rome, Comisky & McCauley in Philadelphia. Mr. Young has had extensive experience with very complex litigation, and joined us in early 1981 specifically to try this case.

One further criticism that has been directed to the way the Department has handled this case is that we did not become sufficiently involved in overseeing the activities of the independent asset managers. I think it is interesting to note that some of our

opponents in the litigation have alleged that we have been too involved in the managers' affairs.

It is our position that it is not the job of the Department of Labor to manage the affairs and assets of employee benefit plans. That is the responsibility of the fiduciaries who assume liability for the consequences of their actions. The Department's obligation is to assure compliance with ERISA and that the fiduciaries are held accountable if they abuse or misuse their position.

Mr. Chairman, I would like to conclude my portion of this presentation by telling you that when I assumed my position, I determined fairly early that it was necessary for us to place increased emphasis on the ERISA enforcement program. Under existing budgetary authority, I am increasing the staff devoted to ERISA litigation by approximately 25 percent. The present staff is an extremely competent body of lawyers and support staff but due to the increased litigation I foresee under ERISA, we must add additional personnel.

I have also determined that it is important that we establish a more credible enforcement posture. As Mr. Clayton noted, in the past the Department often pursued cases because of their precedential value, in order to establish a body of law. Now we are looking at the facts of all the cases referred to us, and if we determine that there has been a violation of the act, we intend to proceed without a precedential selection procedure. We will be focusing our attention on those cases involving the most participants and beneficiaries and the most amount of money involved, and we also will be focusing our attention on those people who illegally profit from their actions relating to employee benefit plans.

I want to reemphasize for you the Department of Labor's determination to vigorously enforce ERISA. Participants and beneficiaries of plans will have their rights, benefits, and retirement incomes protected, and individuals who abuse their fiduciary responsibilities will be removed and held accountable for their actions.

Mr. Chairman, this concludes Mr. Clayton's and my prepared statement. As a final comment, I again would like to applaud you and the committee staff. I have told you previously before this committee that this oversight of ERISA enforcement and litigation is long overdue. Your activities and the activities of the committee staff—which by the way have been very responsible—have pushed the Government to a complete review of this program, and I think it was about time that that was done.

That concludes my presentation.

[The prepared statement of Mr. Ryan follows:]

STATEMENT OF
T. TIMOTHY RYAN, JR.
SOLICITOR OF LABOR
AND
JEFFREY N. CLAYTON,
ADMINISTRATOR, PENSION AND WELFARE BENEFIT PROGRAMS
U.S. DEPARTMENT OF LABOR
BEFORE THE COMMITTEE ON LABOR AND HUMAN RESOURCES
U.S. SENATE

February 23, 1982

Mr. Chairman and Members of the Committee:

It is a pleasure for us to come before you to discuss the Department of Labor's enforcement of the Employee Retirement Income Security Act (ERISA) and specifically our involvement in litigation relating to the Southern Nevada Culinary and Bartenders Pension Trust Fund. We will first address our over-all approach to ERISA enforcement, and then we will discuss the litigation of the case, which is formally titled Donovan v. Schmoutey. Following our statement, Mr. John Young, the lead attorney on the case, will discuss some of the specifics of the case.

However, before we begin our presentation, I would like you to know that we at the Department of Labor--especially the Secretary, Mr. Clayton, and myself--applaud your efforts, Mr. Chairman, to provide thorough and responsible oversight regarding our ERISA activities. The statute was enacted in 1974, and

there have since been a number of legislative modifications. However, during this period, there has never been major oversight hearings on ERISA enforcement such as those you are now conducting.

The Department of Labor welcomes your review of our actions. We realize the enormous responsibility which was given to us by the enactment of ERISA. At present there are some 50 million workers in 560,000 pension plans, and perhaps three times that number of workers and beneficiaries in the 4 1/2 million welfare plans in the country. The present value of pension plans is valued at \$560 billion, and this is estimated to escalate to an astronomical \$3 trillion in 1995, a mere thirteen years from now.

This is a tremendous number of people and a tremendous amount of money. Our responsibilities are awesome, but we will take every action possible to insure that the participants and beneficiaries of all of these funds--both union and non-union--are protected.

And this is an important point to make, Mr. Chairman. By your review and oversight of the ERISA program, you are doing a service to all the beneficiaries and participants of all plans. You are exercising your oversight responsibility to review our enforcement

responsibility. These obligations go hand-in-hand, and through this cooperative effort, the millions of Americans who participate in or who will benefit from employee benefit plans, should be assured that we are doing our utmost to afford them their statutory protections.

So we applaud your leadership, Mr. Chairman, and we look forward to a continuation of our cooperative efforts.

ERISA ENFORCEMENT (Mr. Clayton):

Mr. Chairman, because the Culinary Workers' case is now in the litigation stage, I believe it would be more appropriate for Mr. Ryan to address the Department's involvement in that proceeding. I would like to take a few minutes, however, to discuss what we are doing in the Department to assure that ERISA enforcement receives the top priority and attention it deserves.

As you are aware, enforcing ERISA is a massive job. We have less than 200 investigators nationwide although, as Mr. Ryan stated, there are 560,000 pension plans and 4 1/2 million welfare plans. However, in the short time that I have been the Administrator for Pension and Welfare Benefits Program, I have found that our investigators are high-caliber professionals

who work hard at their jobs and are dedicated to protecting plan participants' and beneficiaries' benefits.

We have been working hard to improve our enforcement efforts, in both the civil and criminal areas. We are undertaking a complete review of our enforcement activities, and have already implemented certain changes. I believe that more emphasis needs to be placed on enforcement than has been in the past. American workers deserve to have their pension benefits protected in the same fashion as you or I would like to have our own benefits protected.

In the last few weeks I have visited three of our six regional offices to discuss with the staff the need to increase our emphasis on detecting criminal violations of ERISA, and other changes as well. I can assure you the field staff is eager to participate in an increased enforcement effort. I intend to visit the remaining three offices in the very near future.

One of the most significant improvements we have made is the increased authority given to our field staff. In the future they will be able to take substantially more actions without obtaining prior approval from Washington, and they will be expected to actively seek voluntary compliance on all cases deemed appropriate

before referring a case to the National Office. The field will be allowed to enter into voluntary compliance negotiations in cases with monetary claims of up to \$500,000, as compared to the previous limit of \$150,000. Also investigators will be allowed to advise plan administrators of their preliminary findings. These changes should allow more cases to be processed, thus increasing our enforcement impact.

In addition, the Solicitor has established a pilot program in the San Francisco regional office to determine the feasibility of decentralizing ERISA litigation. These actions will enhance the visibility of the Department around the country, rather than have it concentrated in Washington.

Further, as he will discuss momentarily, the Solicitor has changed ERISA litigation strategy from one which placed emphasis on establishing legal precedents to a more enforcement oriented mode. Accordingly, the number of ERISA litigators will be substantially increased.

Unfortunately, in the past, a number of plan fiduciaries may have thought that they could avoid compliance with the statute because the chances were good that the Department would not sue. It has sometimes

been difficult for the Department to achieve voluntary compliance or settlement because of a perceived lack of substantial threat of litigation. However, these people can no longer proceed on the expectation of limited litigation. We intend to enforce the law, and enforce it vigorously. More lawsuits will be brought, and we will not hesitate to commit the necessary resources to conduct and complete investigations and litigation of significant cases.

We place a high priority on targeting cases for investigation. Unfortunately, our ability to target cases by computer is still quite unsophisticated. This has been, I believe, one of the major weaknesses of our program. We are looking at ways to improve the situation. One possibility is that we are receiving the wrong information from our annual reports. Although I recognize the burden placed on the submitters of the annual report, I believe that it is an important and necessary enforcement tool, but perhaps not in its current form. We are undertaking an analysis to determine what information currently in the annual report is useful and what is not. At the same time, we are trying to determine what additional information we should request to step up our enforcement capability.

Our program has been primarily civil in nature, and we have concentrated our efforts to a great extent in the fiduciary area. However, as Secretary Donovan has emphasized to this Committee and the Permanent Subcommittee on Investigations, we believe our investigators should be more active in detecting potential criminal violations of the statute. Much greater emphasis is being placed on our obligation to provide the Department of Justice and other law enforcement agencies with any information we uncover which might warrant consideration for possible criminal prosecution. We will propose changes in our enforcement procedures and additional training for investigators to assure more and better criminal leads are referred to the Justice Department. We are currently holding discussions with the Justice Department as to the best method of accomplishing these objectives.

We have a large task in front of us. However, I believe we have made a promising start, and we anticipate other significant changes in our enforcement program to assure compliance with ERISA. We take our duties and obligations seriously.

DONOVAN v. SCHMOUTEY (Mr. Ryan):

Before I discuss the Culinary Workers litigation in detail, I would like to give you a general overview of our ERISA litigation. At the beginning of 1981, we had 54 ERISA cases in litigation, and 185 others were awaiting disposition--cases which had been referred to us for a decision as to whether we should proceed to litigation. At the end of the year, the number of cases which were in litigation had grown to 77, but there were only 26 matters awaiting disposition. I am proud of this record, and I think it clearly demonstrates the importance we place on ERISA enforcement.

The Culinary Workers' case is one of the major on-going cases which has been brought under ERISA. In this litigation the Department alleges that the trustees and others violated the fiduciary responsibility and prohibited transactions provisions of ERISA in the negotiation and management of a series of loans. I would note at the outset that the Culinary Workers' local which co-sponsors this plan is the largest labor union in the State of Nevada. The plan's current assets exceed \$100 million, and there are at present approximately 30,000 participants in the plan. We believe the litigation we have brought is necessary

to secure the viability of the plan to protect the rights and funds of these participants.

I believe it would be helpful for the Committee for me to outline for you the history of our involvement in the case from the initiation of the investigation to the present status of the litigation.

Beginning in 1973, the trustees of the fund committed the plan to a series of loans to Murrieta Hot Springs, Inc. and Sierra Charter Corporation of Nevada, two land developing companies which were owned or controlled by Morris Shenker. These initial loans totalled approximately \$14.5 million. They were secured by a Murietta project near San Diego, California and property being developed by Sierra near Lake Tahoe, Nevada. In 1975, the fund entered into two modifications of the original agreements in which additional loans were committed to finance ongoing operations of the two businesses.

The Department learned of the loans in late 1976 and then began its investigation of the Fund. The basis of the investigation was the allegations that the loans were seriously delinquent and inadequately secured. The Department initiated an intensive and expedited investigation, and concluded that the allegations were true, and that they involved a violation

of the fiduciary responsibility provisions of ERISA. It was also discovered that the Plan was continuing to make large disbursements--in the range of \$500,000 per month--to the Shenker owned and controlled companies, and we believe these also involved violations of the statute.

The Department believed that the situation was of such a serious nature that immediate action was necessary. Therefore, a complaint was filed on March 30, 1977 in which it was alleged that:

- (1) the trustees acted imprudently in their negotiations regarding the modifications of the loans and their continued management;
- (2) the trustees failed to diversify the plan's assets because approximately 60 percent of the entire assets were committed to these loans; and
- (3) the trustees violated the prohibited transactions provisions of ERISA because the loans benefited Mr. Shenker who, because of his ownership of the Dunes Hotel which is a contributing employer of the Plan, is a party-in-interest with respect to the Plan under the statute.

The complaint sought a permanent injunction against ERISA violations, removal of the trustees, and restoration of Plan funds by the certain former and then-present trustees, and rescission of the loans and recovery of all moneys loaned to Mr. Shenker and his companies.

In addition, because the actions of the trustees were considered to seriously jeopardize the funds of the Plan, a preliminary injunction was sought at the same time to stop the on-going disbursements, to remove the trustees, and to provide for the appointment of a receiver. In response to this motion, the trustees agreed to the appointment of an independent asset manager to handle the Plan's assets and pledged collateral which had grown to include interests in real estate in several states.

In August 1977 the Upper Avenue Bank of Chicago, Illinois was appointed as the asset manager. They filed an Asset Mangement Plan in March 1978 which sets forth, as the name of document indicates, their intentions of how to manage the assets.

In May 1979 Upper Avenue Bank voluntarily resigned and was replaced by Thomas L. Karsten Associates, a Los Angeles real estate consulting firm. The firm continues today to act as the independent asset manager.

Mr. Chairman, at the time the Department commenced the legal action, all of the loans in question totalled approximately \$27.25 million. As of the end of 1981, the present asset manager estimates that the amount of the loans with accrued interests has grown to \$45.2 million. However, the collateral held by the Plan to secure the loans is estimated at only about \$11 million.

The litigation of the case has been lengthy and complex. At its inception, the suit named as defendants only the trustees and Mr. Shenker and his companies. However, these individuals have attempted to shift their liability by the use of third party complaints, and there are now approximately twenty parties to the action.

I would also point out that we have gathered over 500,000 documents in the discovery phase of the case. In addition, numerous people have been deposed, and their combined depositions total over 30,000 pages. This is a voluminous amount of paper and information. Discovery has been extended by the Court on numerous occasions. However, we have asked the Court to set a firm trial date, and we are hopeful that the case will proceed accordingly.

Mr. Chairman, I am aware that there has been some criticism of the fact that it has taken so long to bring this matter to trial. However, based on the complexity of this case and the huge amount of evidence which has been amassed, this should not be all that surprising. I think you would find that cases in this and other areas of the law of similar size and complexity also take a long time to come to trial. Nevertheless, I agree that five years is a long time for this to have dragged on, and I sincerely hope that the Court will grant our request to set a trial date.

It has also been alleged that the Department has not devoted enough resources to this case. I do not intend to sit in judgment on the actions of my predecessor, but I will tell you that I am committing the resources which are necessary to bring this case to a successful conclusion. We presently have four attorneys working on the case virtually full-time. As I have noted previously, the lead attorney is John Young who came to the Department from private practice where he worked for the firm of Blank, Rome, Comisky & McCauley. Mr. Young has had extensive experience with very complex litigation, and joined us in early 1981 specifically to try this case.

One further criticism that has been directed to the way the Department has handled this case is that we did not become sufficiently involved in overseeing the activities of the independent asset managers.

I think it is interesting to note that some of our opponents in the litigation have alleged that we have been too involved in the managers' affairs. It is our position that it is not the job of the Department of Labor to manage the affairs and assets of employee benefit plans. That is the responsibility of the fiduciaries who assume liability for the consequences of their actions. The Department's obligation is to assure compliance with ERISA and that the fiduciaries are held accountable if they abuse or misuse their positions.

Mr. Chairman, I would like to conclude my portion of this presentation by telling you that when I assumed my position, I determined fairly early that it was necessary for us to place increased emphasis on our ERISA enforcement. Under existing budgetary authority, I am increasing the staff devoted to ERISA litigation by approximately 25 percent. The present staff is an extremely competent body of lawyers and support staff, but due to the increased litigation I foresee under ERISA, we must add additional personnel.

I have also determined that it is important that we establish a more credible enforcement posture. As Mr. Clayton noted, in the past the Department often pursued cases because of their precedential value in order to establish a body of law. Now we are looking at the facts of all the cases referred to us, and if we determine that there has been a violation of the Act, we intend to proceed without a precedential selection procedure. We will be focusing our attention on those cases involving the most participants and beneficiaries and the most money involved. And we also will be focusing our attention on those people who illegally profit from their actions relating to employee benefit plans.

I want to reemphasize for you the Department of Labor's determination to enforce ERISA. Participants and beneficiaries of plans will have their rights, benefits and retirement incomes protected, and individuals who abuse their fiduciary responsibilities will be removed and held accountable for their actions.

Mr. Chairman, this concludes Mr. Clayton's and my prepared statement. Mr. Young will now discuss some of the specifics of the litigation. Then the we will be pleased to answer any questions you or the other Members of the Committee may have.

Thank you.

The CHAIRMAN. Thank you, Mr. Ryan. We appreciate that, and I am glad you are beefing up the support staff to be able to take on this added workload because we think it is a serious problem.

Ms. Gallagher, we will turn to you.

STATEMENT OF MONICA GALLAGHER, ASSOCIATE SOLICITOR OF LABOR, PLAN BENEFITS SECURITY DIVISION, U.S. DEPARTMENT OF LABOR

Ms. GALLAGHER. Mr. Chairman, Senator Nickles, it is my pleasure to be available this morning to respond to your questions. As a preliminary matter, perhaps I could discuss my professional background and the role that I play in the Labor Department's administration of the ERISA program.

After graduating from St. Louis University Law School in 1966, I was employed in the honors program of the Department of Justice as a trial attorney in the Civil Rights Division. Six years later I left my position, then as a supervisory attorney in the criminal section of that division, to become assistant professor of law at Georgetown University Law Center. After teaching full time for 2 years, I became deputy to the general counsel of the United Mine Workers Health and Retirement Funds.

In July, 1975 I was hired by the Labor Department as the first counsel for litigation in the Plan Benefits Security Division. In the fall of 1977 I was appointed to my present position as Associate Solicitor, which is the head of that division. I am a career member of the Senior Executive Service.

Within the Department of Labor, the Secretary's principal responsibilities for the administration and enforcement of ERISA are delegated to the Assistant Secretary for Labor Management Relations, who heads the Labor Management Services Administration, and within LMSA, to the Administrator of pension and welfare benefit programs. The legal services supporting the various programs within the Department are provided by the Solicitor, whose office is organized into divisions, each division headed by an Associate Solicitor. As Associate Solicitor for the Plan Benefits Security Division, I lead the division which, under the direction of the Solicitor, provides legal services to the Secretary and his delegates, who are my clients, in their administration and enforcement of the law.

Since I joined the Department in 1975, we have prepared and filed about 100 civil actions under ERISA brought on behalf of the Secretary against plan fiduciaries, alleging violations of their fiduciary responsibilities. These cases have involved single- and multi-employer plans, large and tiny plans, vast and sometimes small sums of money. A large percentage of them have involved multi-employer plans associated with labor unions. Many of these especially have involved large sums of money.

I am proud to be able to say, to the credit of the Department and the Division, that the Secretary has been successful in nearly 100 percent of our litigation brought under ERISA and concluded to date. More importantly, many of our victories represent major achievements. Far-reaching relief has been obtained, sizable money judgments have been secured for the benefit of plan participants,

and ground-breaking legal precedents have been established that help to clarify and expand the rights of all participants and beneficiaries.

As for my direct responsibility in the Culinary Workers case, I was counsel for litigation at the time the investigation was commenced and at that time, at the request of the acting administrator of the program, I assigned one of our most experienced attorneys to provide legal assistance in the early stages of the investigation. I was kept apprised of developments during this period and participated in the preparation of the memoranda recommending prompt initiation of litigation.

After suit was filed I continued to monitor developments in the case as litigation counsel, and after becoming Associate Solicitor I have continued to maintain a supervisory interest in the trial preparation and the many related developments. Throughout this entire period I have been essentially in constant contact with representatives of one or more levels of the hierarchy of my client agency, whose policy decisions affect the conduct of the litigation in a variety of ways.

As you know, the Culinary Workers case was one of the first major cases brought by the Department under ERISA. It involves a complex factual situation. The Solicitor has outlined it and Mr. Young, our lead attorney on the case, is prepared to summarize the underlying facts. However, it is not necessary to examine fully the array of claims and parties to understand that, with the novelty and complexity of ERISA and the jigsaw of facts, this litigation has presented a formidable task.

The decisions made in going forward with it are fully understood when placed in their historical perspective. With hindsight it is easy to say that our handling of certain aspects of the case left something to be desired or would have worked out better if a different course had been pursued. However, at the time and faced with the situation as we found it, we thought our decisions were correct. We are continuing to work hard on this case. We are hoping for a trial in the relatively near future and for a successful result.

Now, in 1982, we have 7 years of experience in dealing with ERISA. A fair body of judicial precedent surrounds the words of the statute. At the same time, we who have been involved with the development of the law have grown more sophisticated in our handling of these cases, and I think if you look at the way we operate today you will find some very real differences from our earliest endeavors 7 years ago.

The Solicitor has impressed on us the importance he places on ERISA enforcement. In this regard, he is devoting more resources—which we need and have needed—to our litigation. I am informed that the legal staff will be expanded by 25 percent under existing budgetary authority. Further, as I said earlier, one of the most important considerations shaping early efforts in ERISA litigation was the development of the law, establishing sound legal precedents. Mr. Ryan has directed us to reduce the significance of this factor in our litigation decisionmaking and to pursue litigation of ERISA cases where violations are found, regardless of their possible precedential significance.

I will not tell this committee that we will never make mistakes in the future. We are human. I will assure you that we—certainly I, and I think I speak for all the personnel of my division—will work very hard and very conscientiously, and will do everything possible to execute our mission effectively.

We are charged with the responsibility of providing legal services to support the Secretary's administration and enforcement of ERISA for the protection of participants' and beneficiaries' funds and rights. We undertake these obligations very seriously and hope to fulfill them professionally and successfully.

I will be pleased to attempt to answer any questions you may have.

The CHAIRMAN. Thank you so much.

We will come back to you, Mr. Young, in a few minutes.

Mr. Ryan, on December 9, 1981, you sent me a status report on civil enforcement cases describing, among other things, some 163 cases that were closed administratively by the Solicitor's Office during 1981. Another list of those cases prepared for internal use by the Office of Enforcement indicated that 34 of these cases had experienced or were about to experience statute of limitations problems in 1981. Are you familiar with the second of these?

Mr. RYAN. I am familiar with the entire report that was sent to you. I am also familiar with, I believe it was the Deputy Assistant Secretary, Mr. St. Cyr's report.

The CHAIRMAN. OK, then, we will put in the record at this time backlog documents one and two, without objection.

[The prepared statement of Ms. Gallagher and the material referred to follow:]

STATEMENT OF
MONICA GALLAGHER
ASSOCIATE SOLICITOR OF LABOR
PLAN BENEFITS SECURITY DIVISION
OFFICE OF THE SOLICITOR
U.S. DEPARTMENT OF LABOR
BEFORE THE
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

February 24, 1982

Mr. Chairman and Members of the Committee:

It is my pleasure to be available to respond to any questions you may have. As a preliminary matter, perhaps I might describe my professional background and my role in the Labor Department's administration of the ERISA program.

After graduating magna cum laude from St. Louis University Law School in 1966, I was employed in the honors program of the Department of Justice. Six years later I left my position as a supervisory attorney in the Criminal Section of the Civil Rights Division of Justice to become assistant professor of law at Georgetown University Law Center. After teaching full time for two years, I became Deputy to the General Counsel of the United Mine Workers Health and Retirement Funds.

In July 1975, I was hired by the Labor Department as the first Counsel for Litigation in the Plan Benefits

Security Division. In the fall of 1977 I was appointed to my present position as Associate Solicitor, which is the head of the Division. I am a career member of the Senior Executive Service.

Within the Department of Labor, the Secretary's principal responsibilities for the administration and enforcement of ERISA are delegated to the Assistant Secretary for Labor Management Services Administration, and within LMSA, to the Administrator of Pension and Welfare Benefit Programs. The legal services supporting the various programs within the Department are provided by the Solicitor of Labor, whose office is organized into Divisions. Each Division is headed by an Associate Solicitor. As Associate Solicitor for the Plan Benefits Security Division, I lead the Division which, under the direction of the Solicitor, provides legal services to the Secretary and his delegates, all of whom are my clients, in their administration and enforcement of ERISA.

Since I joined the Department in 1975, we have prepared and filed about 100 civil actions under ERISA brought on behalf of the Secretary against plan fiduciaries, alleging violations of their fiduciary responsibilities. These cases have involved single- and multi-employer

plans, large and tiny plans, vast and small sums of money. A large percentage of them involved multi-employer plans associated with labor unions; many of these especially have involved large sums of money. I am proud to be able to say, to the credit of the Department and the Division, that the Secretary has been successful in nearly 100% of our litigation brought under ERISA and concluded to date. More importantly, many of our victories represent major achievements. Far reaching relief has been secured, sizeable money judgments have been obtained for the benefit of plan participants, and ground-breaking legal precedents have been established that help to clarify and expand the rights of all participants and beneficiaries.

As for my direct responsibilities in the Culinary Workers case, I was counsel for litigation at the time the investigation was commenced, and at that time, at the request of the Acting Administrator, I assigned one of our most experienced attorneys to provide legal assistance in the early stages of the investigation. I was kept apprised of developments during this period and participated in the preparation of the memoranda recommending prompt initiation of litigation. After suit was filed I continued to monitor

developments in the case as litigation counsel, and after becoming Associate Solicitor I have continued to maintain a supervisory interest in the trial preparation and many of the related developments. Throughout this entire period I have been essentially in constant contact with representatives of one or more levels of the hierarchy of my client agency, whose policy decisions affect the conduct of the litigation in a variety of ways.

As you know, the Culinary Workers case was one of the first major cases brought by the Department under ERISA. It involves a complex factual situation. The Solicitor and Mr. Young, our lead attorney on the case, have summarized the underlying facts. But it is not necessary to examine fully the array of claims and parties to understand that, with the novelty and complexity of ERISA and the jigsaw of the facts, this litigation has presented a formidable task. The decisions made in going forward with it are fully understood only when placed in their historical perspective. With hindsight, it is easy to say that our handling of certain aspects of the case left something to be desired, or would have worked out better if a different course had been pursued. However, at the time, faced

with the situation as we found it, we thought our decisions were correct and legally justified. We are continuing to work hard on this case, and we are hoping for a trial in the relatively near future and a successful result.

It is now 1982, and we have seven years of experience in dealing with ERISA. A fair body of judicial precedent surrounds the words of the statute. At the same time, we who have been involved with the development of this law have grown more sophisticated in our handling of these cases, and I think that if you look at the way we operate today, you will find many differences from our earliest endeavors seven years ago.

The Solicitor has impressed on us the importance he places on ERISA enforcement. // In this regard, he is devoting more resources, which we need and have needed, to our litigation. I am informed that the legal staff devoted to ERISA litigation will be expanded by some twenty-five percent under existing budgetary authority. Further, as I noted earlier, one of the more important considerations shaping early efforts in ERISA litigation was the development of the law, establishing sound legal precedents. Mr. Ryan has directed us to reduce the significance of law development

in our litigation decision making, and to pursue the litigation of ERISA cases where violations are found, regardless of their possible precedential significance.

I will not tell this Committee that we will never make mistakes in the future. We are human. I will assure you that we--that I, certainly, and I think I can speak for all the personnel of my division--will work very hard and very conscientiously, and will do everything possible to execute our mission effectively. We are charged with the responsibility of providing the legal services to support the Secretary's administration and enforcement of ERISA for the protection of participants' and beneficiaries' funds and rights. We undertake these obligations seriously, and hope to fulfill them professionally and successfully.

I will be pleased to attempt to answer any questions you might have.

U.S. Department of Labor

Assistant Secretary for
Labor-Management Relations
Washington, D.C. 20210



8 FEB 1982

Honorable Orrin G. Hatch
Chairman, Committee on Labor
and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In his letter to you dated December 29, 1981, T. Timothy Ryan, Jr., Solicitor of Labor, transmitted to you a report of the Solicitor's Office activities under the Employee Retirement Income Security Act of 1974. Part III of that report described matters closed in the Solicitor's Office during calendar year 1981, many of which were returned to the Pension and Welfare Benefits Program (PWBP) with a recommendation that voluntary compliance be pursued. The Solicitor indicated in his letter that PWBP would prepare a summary report of its efforts in these matters. Enclosed is that report.

Our report contains relevant dates and brief descriptions of actions taken as of January 20, 1982 with respect to each identified case. In order to facilitate the Committee's review, each case in our report has been assigned the same item number as in Part III of the Solicitor's report.

I hope this report will be helpful to the Committee in the performance of its important oversight responsibility. In the event you or the Committee staff have questions on any case in the report, please do not hesitate to contact me.

Sincerely,

Donald L. Dotson
Assistant Secretary
Labor-Management Relations

Enclosure

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 5

Case Title: Smart Chevrolet Pension and Profit Sharing Plans

PBSD Docket No.: 18-10-300

PWBP Case No.: 64-3866, 64-4130

Date Field Referred to OE: 7/31/78

Date OE Referred to SOL: 9/11/78

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 3/10/81

Date OE Sent to Field: 4/17/81

Date Field Initiated Voluntary Compliance: N/A

Final Disposition: IRS is actively pursuing party in interest issues and other issues have become moot due to change in plan's investment policy and the disposal of other participation loans.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 8

Case Title: Tapers Industry Insurance Fund

PBSD Docket No.: 18-51-325

PWBP Case No.: 30-7626

Date Field Referred to OE: 9/15/77

Date OE Referred to SOL: 1/30/78

OE Recommendation to SOL: Litigation

Date SOL Returned to OE: 10/29/81

Date OE Sent to Field: 12/24/81

Date Field Initiated Voluntary Compliance: 1/6/82

Final Disposition: Parties have been interviewed and the
matter is pending disposition.

CASES RETURNED FROM THE FIELD WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 13

Case Title: ERB Plastics, Inc., Profit Sharing Plan

PEED Docket No.: 18-19-340

PWBP Case No.: 40-8779

Date Field Referred to OE: 9/28/78

Date OE Referred to SOL: 12/8/78

OE Recommendation to SOL: Voluntary Compliance/Litigation

Date SOL Returned to OE: 1/7/81

Date OE Sent to Field: 1/21/81

Date Field Initiated Voluntary Compliance: 4/3/81

Final Disposition: Voluntary Compliance was achieved after
exchange of letters between plan and Area Office.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 18

Case Title: San Jose Medical Clinic Profit Sharing Plan

PBSD Docket No.: 18-11-361

PWBP Case No.: 70-6459

Date Field Referred to OE: 1/26/79

Date OE Referred to SOL: 2/2/79

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 4/3/81

Date OE Sent to Field: 9/10/81

Date Field Initiated Voluntary Compliance: N/A

Final Disposition: Case was discussed and coordinated with the IRS. Area Office discussions with the IRS indicated that they were not willing to challenge the appraisal used in the sale/lease. The IRS also indicated that they would not take further action because a "disqualified person" was not involved in the transaction and the plan received substantial value for its 40% interest in the partnership. In view of the IRS position and the Solicitor's assessment of the desirability of litigating the issues, no further action was taken on the case, except to notify the plan that our investigation was complete.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 23

Case Title: Gust Georges Employee Benefit Plan

PBSL Docket No.: 18-64-380

PWBP Case No.: 21-5598

Date Field Referred to OE: 10/24/78

Date OE Referred to SOL: 3/16/79

OE Recommendation to SOL: Voluntary Compliance/Litigation

Date SOL Returned to OE: Not Returned

Date OE Sent to Field:

Date Field Initiated Voluntary Compliance:

Final Disposition: Based on the Field referral, OE sent a voluntary compliance letter to the plan on 12/20/78 which indicated that the plan was not in compliance with sections 206, 209, 402 and the reporting provisions of ERISA. The plan responded to the letter on 3/2/79. The plan letter raised issues dealing with ERISA coverage and plan termination. On 3/16/79, OE referred the case to SOL for a review of technical legal issues and guidance with respect to case disposition. A report on the status of this case which was prepared by OE on 8/5/80 indicates that SOL referred the case to PBGC, after deciding not to litigate. No further action has been taken on this case by OE in regard to voluntary compliance.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 24

Case Title: Employee Stock Ownership Plan of American Steel Building, Co.

PBSD Docket No.: 18-74-385

PWBP Case No.: 63-8920

Date Field Referred to OE: 12/19/78

Date OE Referred to SOL: 2/1/79

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 4/10/81

Date OE Sent to Field: 5/27/81

Date Field Initiated Voluntary Compliance: 7/6/81

Final Disposition: Case was referred to the IRS after a letter
was sent to the plan officials.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 25

Case Title: Decker Steel Company Profit Sharing Retirement Plan

PBSD Docket No.: 18-36-387

PWBP Case No.: 52-7443

Date Field Referred to OE: 3/12/79

Date OE Referred to SOL: 4/9/79

OE Recommendation to SOL: Legal opinion and analysis.

Date SOL Returned to OE: 7/12/79

Date OE Sent to Field: 7/17/79

Date Field Initiated Voluntary Compliance: 8/29/79 and 2/2/80

Final Disposition: Trustees initial response to DOL was refusal to restore \$52,644 in plan losses and case was referred back to OE on 12/13/79. Matter was referred back to SOL following PWBP/SOL consultation. AO instructed on 2/2/80 to inform plan participants of loss through fiduciary abuse (matter lacked litigative merit). Participants sued fiduciaries on matter 9/24/80.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 27

Case Title: Atlas Sheet Metal Profit Sharing Trust

PBSD Docket No.: 18-61-393

PWBP Case No.: 71-4459

Date Field Referred to OE: 3/30/79 and 4/16/81

Date OE Referred to SOL: 4/24/79 and 8/18/81

OE Recommendation to SOL: Litigation

Date SOL Returned to OE: 1/13/81 and 8/25/81

Date OE Sent to Field: 1/19/81 and 8/28/81

Date Field Initiated Voluntary Compliance: 9/22/81

Final Disposition: After sending the case back to the Area Office on 1/19/81, for implementation of voluntary compliance, the Area Office in a memorandum dated 4/16/81, requested reconsideration by SOL and OE with respect to certain issues. On 8/18/80, the case was referred back to SOL for reconsideration. On 8/25/81, the case was discussed by SOL and OE. In a memorandum dated 8/28/81, the Area Office was advised to send a notice letter to the plan and such letter was sent on 9/22/81. The Area Office had a meeting with plan fiduciaries on 1/19/82 and the position of the fiduciaries is being evaluated.

ITEM NO.: 31

CASE TITLE.: Harvey Feilen Meat Company ESOP

PBSO DOCKET NO.: 18-28 405

PWBP CASE NO.: 62-6197

Date Field Referred to OE: 3/1/79 (Date of Referral of ROI)
5/7/79 (Date of Supplemental Referral)

Date OE Referred to SOL: 5/30/79

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 7/16/81

Date OE Sent to Field:

Date Field Initiated Voluntary Compliance:

Final Disposition: The case is pending disposition in OE. The complete Area Office file was referred to the IRS on 7/9/79 per a request from the IRS. On 1/18/82, the IRS indicated that the stock valuation issue had been reviewed and a determination made to take no further action. The Area Office intends to request IRS files and evaluate their position.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 35

Case Title: J.T. Chapman Co., Pension Plan and ESOP

PBSD Docket No.: 18-73-436

PWBP Case No.: 63-9179

Date Field Referred to OE: 6/28/79

Date OE Referred to SOL: 7/30/79

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 2/12/81

Date OE Sent to Field: 9/10/81

Date Field Initiated Voluntary Compliance: 10/2/81

Final Disposition: AO coordination with IRS resulted in referral to IRS after letter was sent to the plan officials.

10

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 36

Case Title: Bale Finance Company Pension and Profit Sharing Plans

PBSD Docket No.: 12-09-145

PWBP Case No.: 64-4390, 4436, 4438

Date Field Referred to OE: 6/28/79

Date OE Referred to SOL: 8/6/79

OE Recommendation to SOL: Request for comment from Solicitor
regarding proposed voluntary compliance notice letter.

Date SOL Returned to OE: 5/6/81

Date OE Sent to Field:

Date Field Initiated Voluntary Compliance:

Final Disposition: Voluntary compliance is being held in abeyance
pending disposition of an exemption application filed by plan
officials on 3/24/81 and proposed on 12/18/81. The proposed
exemption and the investigation are under consideration.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 38

Case Title: East Texas Savings and Loan Association Profit Sharing Plan

PBSD Docket No.: 18-75-439

PWBP Case No.: 63-7975

Date Field Referred to OE: 5/18/79

Date OE Referred to SOL: 8/16/79

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 6/18/81

Date OE Sent to Field: 1/8/82

Date Field Initiated Voluntary Compliance:

Final Disposition: Issuance of voluntary compliance letter was held in abeyance until court decision in Donovan v. Jeanes, et. al. Court decision was issued on 12/14/81 and area office will send letter to plan.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 43

Case Title: Particle Size Technology Retirement Plan

PBSD Docket No.: 18-48-449

PWBP Case No.: 32-5792

Date Field Referred to OE: 8/6/79

Date OE Referred to SOL: 8/23/79

OE Recommendation to SOL: Litigation

Date SOL Returned to OE: 3/19/81

Date OE Sent to Field: 4/24/81

Date Field Initiated Voluntary Compliance: 6/24/81

Final Disposition: The President and sole stockholder was interviewed in order to explore the repayment of loans. The plan sponsor is in bankruptcy and the area office intends to follow-up.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 45

Case Title: Krafft Company Profit Sharing Plan

PBSD Docket No.: 18-79-455

PWBP Case No.: 22-9614

Date Field Referred to OE: 6/14/79

Date OE Referred to SOL: 9/12/79

OE Recommendation to SOL: Litigation

Date SOL Returned to OE: 12/18/79

Date OE Sent to Field: N/A

Date Field Initiated Voluntary Compliance: N/A

Final Disposition: Demand letter was sent by the Administrator on 1/3/80 and voluntary compliance was obtained by the plan sponsor reimbursing the plan over \$157,000.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 46

Case Title: Austin Mortgage and Trust Company Thrift Plan

PBSD Docket No.: 18-73-457

PWBP Case No.: 63-9195

Date Field Referred to OE: 8/15/79

Date OE Referred to SOL: 9/18/79

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 6/6/81

Date OE Sent to Field: 1/12/82

Date Field Initiated Voluntary Compliance:

Final Disposition: Letter to the plan will be prepared by
the Area Office.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 54

Case Title: A.R. Kramer Company Profit Sharing Plan

PBSD Docket No.: 18-37-475

PWBP Case No.: 52-7593

Date Field Referred to OE: 9/7/79

Date OE Referred to SOL: 10/17/79

OE Recommendation to SOL: Further enforcement action.

Date SOL Returned to OE: 4/3/81

Date OE Sent to Field: 5/8/81

Date Field Initiated Voluntary Compliance: 6/15/81

Final Disposition: AO notice letter to plan dated 4/26/79 requested reversal of \$50,000 prohibited transaction. Plan's reply dated 8/17/79 disagreed with DOL's position and refused corrective action. Therefore, case was sent to OE for referral to SOL. As suggested by SOL, the prohibited transaction was referred to the IRS for disposition.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 55

Case Title: Local 46 (Laundry Workers) Welfare Plan

PBSD Docket No.: 18-23-477

PWBP Case No.: 50-16835

Date Field Referred to OE: 9/11/79

Date OE Referred to SOL: 10/18/79

OE Recommendation to SOL: Litigation

Date SOL Returned to OE: 8/21/81

Date OE Sent to Field: 9/11/81

Date Field Initiated Voluntary Compliance: 10/9/81

Final Disposition: Trustees have had a conference with the AO concerning the voluntary compliance letter. Trustees are in the process of looking for an independent party to review the compensation arrangement between the plan and the union.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 58

Case Title: Bills Institutional Commissary Profit Sharing Plan

PESD Docket No.: 18-41-482

PWBP Case No.: 41-6116

Date Field Referred to OE: 9/11/79

Date OE Referred to SOL: 10/26/79

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 5/1/81

Date OE Sent to Field: 1/12/82

Date Field Initiated Voluntary Compliance:

Final Disposition: Area Office action is pending.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 59

Case Title: National Sales, Inc., Profit Sharing Plan

PBSD Docket No.: 18-41-484

PWBP Case No.: 41-6090

Date Field Referred to OE: 9/7/79

Date OE Referred to SOL: 10/24/79

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 10/21/81.

Date OE Sent to Field:

Date Field Initiated Voluntary Compliance:

Final Disposition: OE memo to the Region is being prepared.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 61

Case Title: Local 9 I.B.E.W. H & W, Vacation and Holiday Funds

PBSD Docket No.: 18-23-486

PWBP Case No.: 50-17729 and 50-17733

Date Field Referred to OE: 10/16/79

Date OE Referred to SOL: 11/2/79

OE Recommendation to SOL: Demand letter to be signed by Administrator, PWBP requiring trustees to restore to the plan \$500,000 plus accrued interest.

Date SOL Returned to OE: 1/9/81

Date OE Sent to Field: 1/21/81

Date Field Initiated Voluntary Compliance: 1/28/81

Final Disposition: Attorney for the plan contacted the AO and requested a conference to discuss the AO's letter. Conference held in mid-March. Attorney submitted additional information based on the conference. Upon review and analysis of this information, the AO requested additional information which was received and is currently under review.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 62

Case Title: Savannah ILA Plans

PBSD Docket No.: 18-19-489

PWBP Case No.: 40-7668

Date Field Referred to OE: 11/1/79

Date OE Referred to SOL: 11/8/79

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 5/14/81

Date OE Sent to Field: 10/19/81

Date Field Initiated Voluntary Compliance:

Final Disposition: Case is being reviewed and is pending
disposition in Regional Office.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 64

Case Title: Jacksonville ILA-LongShoremens Pension, Health and
Welfare, and Holiday Plans
FBSB Docket No.: 18-17M-493

PWBP Case No.: 42-4605, 42-4606, and 42-4607.

Date Field Referred to OE: 10/3/79

Date OE Referred to SOL: 11/21/79

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 5/14/81

Date OE Sent to Field: 10/8/81.

Date Field Initiated Voluntary Compliance:

Final Disposition: Case is being reviewed by Region and is
pending disposition.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 65

Case Title: Retail Store Employees Union, Drug and Mercantile
Employees Welfare Fund
PBSD Docket No.: 18-37-494

PWBT Case No.: 52-7747, 52-7748, 52-7749 and 52-7750

Date Field Referred to OE: 9/24/79

Date OE Referred to SOL: 11/20/79

OE Recommendation to SOL: SOL's opinion as to whether or not the
recommended voluntary compliance effort and the manner in which
it is being sought are appropriate.

Date SOL Returned to OE: 4/18/81

Date OE Sent to Field: 5/20/81

Date Field Initiated Voluntary Compliance:

Final Disposition: AO wanted to hold a meeting with plan trustees
and plan counsel prior to issuing notice letter. Meeting has
not been held and letter has not been issued. On 1/5/82 Chicago
RO directed AO to schedule meeting immediately.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 66

Case Title: CRC-Crose International, Inc., Profit Sharing Plan

PBSD Docket No.: 13-74-498

PWBP Case No.: 63-9329

Date Field Referred to OE: 9/10/79

Date OE Referred to SOL: 12/4/79

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 10/21/80

Date OE Sent to Field: 1/15/81

Date Field Initiated Voluntary Compliance: 2/12/81

Final Disposition: On 3/26/81 plan legal counsel responded to Area Office Notice Letter by disagreeing that plan fiduciaries conscientiously breached their fiduciary responsibilities, requesting the Department to reconsider its position, and asking for further discussion to reach an equitable solution. Plan legal counsel's response was forwarded by the Area Office to the Office of Enforcement on April 8, 1981. The letter was in turn referred to the Solicitor on April 20, 1981. Negotiations between the Solicitor and Plan legal counsel resulted in repayment to plan of \$122,298.47.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 69

Case Title: Eastern Air Lines Variable Benefit Pension Plan

PBSD Docket No.: 02-52-2629

PWBP Case No.: 42-4763 and 31-10962

Date Field Referred to OE: N/A

Date OE Referred to SOL: 5/7/80 (SOL involvement)

OE Recommendation to SOL: Recommendation to obtain additional investigation.

Date SOL Returned to OE: 6/80

Date OE Sent to Field: N/A

Date Field Initiated Voluntary Compliance: N/A

Final Disposition: Letter signed on 6/2/80 by the Administrator citing violations of ERISA sections 404(a)(1)(A) through (D). Conference held on 6/26/80 with representatives from Eastern. Additional information submitted to SOL by Eastern. Closing letter stating no further action sent to Eastern and ALPA on 3/2/81 signed by Administrator Lanoff.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 70

Case Title: Amalgamated Department Store and Retail Employees
Insurance Fund

PBSD Docket No.: 18-37-507

PWBP Case No.: 52-7821

Date Field Referred to OE: 11/5/79

Date OE Referred to SOL: 1/2/80

OE Recommendation to SOL: SOL's opinion and analysis.

Date SOL Returned to OE: 5/22/80

Date OE Sent to Field:

Date Field Initiated Voluntary Compliance:

Final Disposition: Demand letter sent by the Administrator,
PWBP to the plan's trustees on 7/15/80. Issues resolved by
SOL and Administrator's Office.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 73

Case Title: Riggers Local Union 575 Vacation and Health Funds

PBSD Docket No.: 18-37-520

PWBP Case No.: 52-7751

Date Field Referred to OE: 1/30/80

Date OE Referred to SOL: 2/11/80

OE Recommendation to SOL: Requested SOL's opinion as to plan counsel's proposed corrective action which was in response to AO's letter dated 1/2/80.

Date SOL Returned to OE: 8/14/81

Date OE Sent to Field: 9/11/81

Date Field Initiated Voluntary Compliance: 9/30/81

Final Disposition: Contacted plan's counsel after due date for response. Attorney informed the AO that we had taken a long time in responding to his letter and that he would take his time in responding to AO's letter. AO then contacted the trustees who said that they would contact the attorney and start working on a response.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 75

Case Title: International Production, Service and Sales Welfare Fund

PBSD Docket No.: 18-52-524

PWBP Case No.: 30-9119

Date Field Referred to OE: 1/15/80

Date OE Referred to SOL: 2/13/80

OE Recommendation to SOL: Litigation

Date SOL Returned to OE: 7/27/81

Date OE Sent to Field: 9/29/81

Date Field Initiated Voluntary Compliance:

Final Disposition: The Area Office has not yet issued a voluntary compliance letter. The Area Office and the Region are currently discussing the manner in which compliance will be implemented.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 77

Case Title: Jacksonville ILA-Warehousemen's Plans

PBSD Docket No.: 18-17M-526

PWBP Case No.: 42-4608, 42-4609 and 42-4610

Date Field Referred to OE: 10/3/79

Date OE Referred to SOL: 2/14/80

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 5/14/81

Date OE Sent to Field: 10/8/81

Date Field Initiated Voluntary Compliance:

Final Disposition: Case is being reviewed and is pending disposition in the Region.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 78

Case Title: South Atlantic-ILA/GAI Fund

PBSD Docket No.: 18-17-527

PWBP Case No.: 42-4735

Date Field Referred to OE: 9/7/79

Date OE Referred to SOL: 2/14/80

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 5/14/81

Date OE Sent to Field: 10/9/81

Date Field Initiated Voluntary Compliance:

Final Disposition: Case is being reviewed and is pending
disposition in the Region.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 79

Case Title: Cement Masons Apprenticeship and Training Fund

PBSD Docket No.: 18-11-5311

PWBP Case No.: 70-6761

Date Field Referred to OE: 1/7/80

Date OE Referred to SOL: 2/14/80

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 4/21/81

Date OE Sent to Field: 4/81

Date Field Initiated Voluntary Compliance: 5/22/81

Final Disposition: Plan notified of violations and plan is changing its structure to comply with the Act. Area Office is monitoring the Voluntary Compliance efforts.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 83

Case Title: American Federation of Unions Local 102 Health and Welfare
and Vacation Funds

PBSD Docket No.: 18-32-543

PWBP Case No.: 64-4641

Date Field Referred to OE: 7/1/80

Date OE Referred to SOL: 7/15/80

OE Recommendation to SOL: Litigation

Date SOL Returned to OE: 7/15/81

Date OE Sent to Field: 7/23/81

Date Field Initiated Voluntary Compliance:

Final Disposition: Area Office is monitoring private litigation
instituted by the health and welfare plan to recover insurance
commissions and administrative fees. Issuance of letter to plans
is being held in abeyance until results of litigation are known.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 87

Case Title: UAW Staff Pension Plan

PBSD Docket No.: 18-37-551

PWBP Case No.: 52-8023

Date Field Referred to OE: 3/13/80

Date OE Referred to SOL: 4/21/80

OE Recommendation to SOL: Requested SOL to prepare a demand letter for Administrator's signature which states that the trustees be enjoined from continuing the present loan policies of the plan.

Date SOL Returned to OE: 7/9/81

Date OE Sent to Field:

Date Field Initiated Voluntary Compliance:

Final Disposition: OE responded to SOL's proposed litigation memorandum on 8/7/81. After SOL reviewed OE's memo, SOL decided not to send a demand letter. On 10/23/81, OE had a meeting with SOL and it was decided that OE would redraft the demand letter. OE's draft letter was sent to SOL on 12/21/81 for review.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 88

Case Title: Southeast ILA Plans

PBSD Docket No.: 18-18-556

PWBP Case No.: 42-4913

Date Field Referred to OE: 4/3/80

Date OE Referred to SOL: 4/24/80

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 4/14/81

Date OE Sent to Field: 10/19/81

Date Field Initiated Voluntary Compliance:

Final Disposition: Case is being reviewed and is pending disposition
in Regional Office.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 90

Case Title: First National Bank of Jacksonville and Associates Profit
Sharing and Pension Plans; First State Bank of Rusk Pension Plan.
PBSD Docket No.: 18-73-557

PWBP Case No.: 63-9396

Date Field Referred to OE: 12/21/79

Date OE Referred to SOL: 5/8/80

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 7/24/81

Date CE Sent to Field: 1/20/82

Date Field Initiated Voluntary Compliance:

Final Disposition: Disposition of the case was held in abeyance pending
a ruling in Donovan v. Jeanes, et. al. The court issued an
order on 12/14/81. Notice Letter will be issued by the Area Office.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 92

Case Title: Austin Co./Unaka Co. - Profit Sharing Plans

PBSD Docket No.: 18-70-561

PWBP Case No.: 41-6923, 41-6922 and 41-6895

Date Field Referred to OE: 4/30/80

Date OE Referred to SO: 5/14/80

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 9/3/81

Date OE Sent to Field:

Date Field Initiated Voluntary Compliance:

Final Disposition: Solicitor memorandum is under review in OE.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 94

Case Title: Laurel Bancshares Employees' Profit Sharing Plan

PBSD Docket No.: 18-43-569

PWEP Case No.: 60-6386

Date Field Referred to OE: 3/21/80

Date OE Referred to SOL: 6/11/80

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 7/22/81

Date OE Sent to Field: 1/20/82

Date Field Initiated Voluntary Compliance:

Final Disposition: Disposition of the case was held in abeyance pending a ruling in Donovan v. Jeanes, et. al. The court issued an order on 12/14/81. Notice Letter will be issued by the Area Office.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 98

Case Title: Palm Mortuary Employees Retirement Plan

PBSD Docket No.: 18-46-577

PWBP Case No.: 72-8021

Date Field Referred to OE: 5/14/80

Date OE Referred to SOL: 6/23/80

OE Recommendation to SOL: Litigation

Date SOL Returned to OE: 6/29/81

Date OE Sent to Field: 8/13/81

Date Field Initiated Voluntary Compliance: 10/5/81

Final Disposition: Plan notified of violations and the fiduciaries disagree with some of the violations. Area Office continuing discussions to effect Voluntary Compliance.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 99

Case Title: Skogman Construction Company Profit Sharing Plan

FBSD Docket No.: 18-27-578

PWBP Case No.: 62-6323

Date Field Referred to OE: 9/24/79

Date OE Referred to SOL: 6/20/80

OE Recommendation to SOL: Litigative

Date SOL Returned to OE: 1/26/81

Date OE Sent to Field: 1/19/82

Date Field Initiated Voluntary Compliance:

Final Disposition: The misrepresentation issues were referred to the Department of Justice on 7/11/80. With respect to other issues the Area Office will attempt to obtain voluntary compliance.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 104

Case Title: Jim Wilson Company ESOP and Pension Plan; Homestead
Distributing Company ESOP and Pension Plan
PBSD Docket No.: 18-42-587

PWBP Case No.: 62-6508 and 62-6786

Date Field Referred to OE: 5/16/80

Date OE Referred to SOL: 7/15/80

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 8/18/81

Date OE Sent to Field: 12/24/81

Date Field Initiated Voluntary Compliance: N/A

Final Disposition: Area Office advised by Plan CPA in November 1981
that Jim Wilson Plans have voluntarily corrected all violations.
CPA also advised that Plan has been assessed excise tax by
IRS and has paid same. AO is in process of contacting Homestead
Plan officials to verify if violations have been corrected.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 102

Case Title: Ohio Carpenters Health and Welfare Plan

PBSD Docket No.: 18-57-582

PWBP Case No.: 53-11248

Date Field Referred to OE: 6/6/80

Date OE Referred to SOL: 7/11/80

OE Recommendation to SOL: Request for demand letter to be signed
by the Administrator, PWBP, be issued to plan trustees.

Date SOL Returned to OE: 6/17/81

Date OE Sent to Field: 7/10/81

Date Field Initiated Voluntary Compliance: 7/23/81

Final Disposition: Trustees agreed to set up a review committee
to study the compensation arrangement between the plan and
CCA. AO is in the process of securing additional information
concerning the review committee's findings.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 106

Case Title: Brevard Engineering, Co., Pension and Profit Sharing Plans

PBSD Docket No.: 18-18-592

PWBP Case No.: 42-4925
4943

Date Field Referred to OE: 6/3/80

Date OE Referred to SOL: 7/18/80

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 10/21/81

Date OE Sent to Field: 11/17/81

Date Field Initiated Voluntary Compliance: N/A

Final Disposition: Area Office has met with the IRS on the party in interest transactions and IRS intends to take further action.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 107

Case Title: Bayview Federal Savings and Profit Sharing Plans

PBSD Docket No.: 18-11-593

PWBP Case No.: 70-6950

Date Field Referred to OE: 6/13/80

Date OE Referred to SOL: 7/22/80

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 5/8/81

Date OE Sent to Field: 6/22/81

Date Field Initiated Voluntary Compliance: N/A

Final Disposition: Plan was not formally notified of violations. However, the fiduciaries rescinded the transactions, hired an investment manager, and took action to diversify its investment portfolio. In view of this action the plan was notified in a 11/25/81 letter that the Department of Labor would take no further action.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 109

Case Title: Monarch Tile Manufacturing, Inc., Retirement Trust
and ESOP

PBSD Docket No.: 18-73-595

PWBP Case No.: 63-9769

Date Field Referred to OE: 7/3/80

Date OE Referred to SOL: 7/22/80

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 9/10/81

Date OE Sent to Field: 12/21/81

Date Field Initiated Voluntary Compliance:

Final Disposition: Deposition is pending issuance of letter
to plan by the Area Office.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 110

Case Title: Michigan Conference of Teamsters Health and Welfare Fund

PBSD Docket No.: 18-37-596

PWBP Case No.: 52-7530

Date Field Referred to OE: 5/9/80

Date OE Referred to SOL: 7/8/80

OE Recommendation to SOL: Opinion requested as to whether the
Benefit Savings Reserve Policy authorized by the trustees
violates ERISA and review of draft notice letter.

Date SOL Returned to OE: 5/16/81

Date OE Sent to Field:

Date Field Initiated Voluntary Compliance:

Final Disposition: OE memo and advisory letter (no violations)
in typing.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 114

Case Title: Bassett Furniture Industries Retirement Plan

PBSD Docket No.: 18-79-608

PWBP Case No.: 22-9808

Date Field Referred to OE: 7/18/80

Date OE Referred to SOL: 8/19/80

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 1/5/81

Date OE Sent to Field: 1/30/81

Date Field Initiated Voluntary Compliance: 2/2/81

Final Disposition: After the Notice Letter was issued, various discussions were held between the Area Office staff and the Plan. The Area Office, the Regional Office and OE agreed to the remedy proposed by the Plan: interest free loans from the sponsor to the Plan until the Plan's cash flow problems could be corrected on a long-term basis.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 116

Case Title: Western Pacific Employee Medical Corporation

- PBSD Docket No.: 18-11-614

PWBP Case No.: 70-6992

Date Field Referred to OE: 7/25/80

Date OE Referred to SOL: 9/10/80

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 7/16/81

Date OE Sent to Field: 8/11/81

Date Field Initiated Voluntary Compliance: 9/11/81

Final Disposition: Plan notified of violations and area office discussed violations with the fiduciaries. The area office is monitoring the fiduciaries steps to remedy the violations. Full compliance is anticipated by March 1982.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 117

Case Title: Southern California Retail Clerks Welfare and Pension
Trust Funds
PBSD Docket No.: 18-12-614A

PWBP Case No.: 72-7651

Date Field Referred to OE: 4/22/80

Date OE Referred to SOL: 6/10/80

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 7/16/81

Date OE Sent to Field: 8/3/81

Date Field Initiated Voluntary Compliance: N/A

Final Disposition: Plan was notified of potential violations at a conference held with the trustees. Recent renegotiation of the collective bargaining agreement changed the practices disclosed in the investigation.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 122

Case Title: Fondo de Pensiones de los Empl. del Banco de Ponce

PBSD Docket No.: 18-65-623

PWBP Case No.: 37-2357

Date Field Referred to OE: 8/22/80

Date OE Referred to SOL: 9/23/80

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 8/23/81

Date OE Sent to Field: 10/21/81

Date Field Initiated Voluntary Compliance: 12/24/81

Final Disposition: Response to compliance letter has not
yet been received.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 123

Case Title: A.J. Rod Profit Sharing Plan

PBSD Docket No.: 18-14-625

PWBP Case No.: 63-8483

Date Field Referred to OE: 7/2/80

Date OE Referred to SOL: 9/29/80

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 6/1/81

Date OE Sent to Field: 1/19/82

Date Field Initiated Voluntary Compliance:

Final Disposition: Disposition of the case was held in abeyance until a decision in Donovan v. Jeanes, et. al which was handed down on 12/14/81. Notice Letter will be issued by Area Office.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 125

Case Title: Ructer and Zenor Company Employees Trust

PBSD Docket No.: 18-28-627

PWBP Case No.: 62-6476

Date Field Referred to OE: 3/18/80

Date OE Referred to SOL: 10/8/80

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 4/14/81

Date OE Sent to Field: 5/20/81

Date Field Initiated Voluntary Compliance: 6/4/81

Final Disposition: Plan officials responded by 6/12/81 letter to the St. Louis Area Office indicating agreement to prospectively diversify plan investment portfolio by investing in assets other than farmland and making annual current value land asset adjustments.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 128

Case Title: Suburban Teamsters of Northern Illinois Pension
and Welfare Plans

PBSD Docket No.: 18-23-633

PWBP Case No.: 50-18527, 18528

Date Field Referred to OE: 9/22/80

Date OE Referred to SOL: 10/17/80

OE Recommendation to SOL: Litigation

Date SOL Returned to OE: 4/21/81

Date OE Sent to Field: 7/22/81

Date Field Initiated Voluntary Compliance: 12/24/81

Final Disposition: On 8/5/81, AO requested that disposition of
case be reconsidered. OE memo to Chicago RO on 12/7/81 directed
that case be disposed of in accordance with 7/22/81 memo.
Trustees have not responded to AO's 12/24/81 letter.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 132

Case Title: United Food and Commercial Workers Union (Distr. 657) and
Employers Health and Welfare Trust Fund of Florida

PBSD Docket No.: 18-18-640

PWBP Case No.: 42-4770

Date Field Referred to OE: 6/23/80

Date OE Referred to SOL: 10/28/80

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 11/2/81

Date OE Sent to Field:

Date Field Initiated Voluntary Compliance:

Final Disposition: The case is pending disposition in OE.

A memo to the Region will be prepared which will seek prospective
compliance on the trustees failure to account for expenses.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 133

Case Title: Profit Sharing Thrift Plan and Trust Agreement of
Farnsworth Realty and Development
PBSD Docket No.: 18-08-642

PWBP Case No.: 72-8328

Date Field Referred to OE: 9/26/80

Date OE Referred to SOL: 11/4/80

OE Recommendation to SOL: Voluntary Compliance

Date SOL Returned to OE: 1/27/81

Date OE Sent to Field: 3/2/81

Date Field Initiated Voluntary Compliance: 3/19/81

Final Disposition: The Plan rescinded the prohibited transactions
and the fiduciaries were notified of the violations and that
the Department of Labor would take no further action in the matter.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 135

Case Title: Pioneer Employees Profit Sharing and Retirement Plan

PBSD Docket No.: 18-33-646

PWBP Case No.: 64-4777

Date Field Referred to OE: 8/28/80

Date OE Referred to SOL: 11/28/80

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 7/9/81

Date OE Sent to Field: 9/10/81

Date Field Initiated Voluntary Compliance: 9/30/81

Final Disposition: An 10/13/81 letter from plan sponsor to Area Office advised that \$1500 in interest on already repaid party in interest loans has been paid to the Plan; the plan document is being amended to allow loans to plan participants; and an independent CPA will be employed by the Plan to maintain and prepare plan financial records and statements. A plan submission of additional information regarding adequacy of diversification of the plan investment portfolio is under review by the Area Office.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 137

Case Title: Film Transit, Inc., - Profit Sharing Plan

PBSD Docket No.: 18-72-648

PWBP Case No.: 41-7194

Date Field Referred to OE: 11/12/80

Date OE Referred to SOL: 12/5/80

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 7/30/81

Date OE Sent to Field: 10/2/81

Date Field Initiated Voluntary Compliance: 12/7/81

Final Disposition: Area Office is awaiting response from Plan to
12/7/81 Voluntary Compliance Letter.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 138

Case Title: Houchens Industries, Inc., - Employees Trust

FBSD Docket No.: 18-31-649

PWBP Case No.: 41-7031

Date Field Referred to OE: 11/18/80

Date OE Referred to SOL: 12/5/80

OE Recommendation to SOL: Voluntary Compliance.

Date SOL Returned to OE: 7/7/81

Date OE Sent to Field: 1/11/82

Date Field Initiated Voluntary Compliance:

Final Disposition: Case is pending in the Region.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 147

Case Title: Sheet Metal Workers Local 17 Vacation Fund

PBSD Docket No.: 18-36-657

PWBP Case No.: 31-12912

Date Field Referred to OE: 12/15/80

Date OE Referred to SOL: 1/15/81

OE Recommendation to SOL: Send Notice Letter

Date SOL Returned to OE: 6/30/81

Date OE Sent to Field: 8/19/81

Date Field Initiated Voluntary Compliance: 10/9/81

Final Disposition: Major issue resolved; no further action
will be taken.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 151

Case Title: Engler, Schwechter, Zoghlin and Mann

PBSD Docket No.: 18-23-662

PWBP Case No.: 50-18549

Date Field Referred to OE: 1/26/81

Date OE Referred to SOL: 2/24/81

OE Recommendation to SOL: Litigation

Date SOL Returned to OE: 11/9/81

Date OE Sent to Field: N/A

Date Field Initiated Voluntary Compliance: N/A

Final Disposition: Meeting to be scheduled with SOL regarding
additional investigation recommended in SOL's memo.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 152

Case Title: Service Local 189 Welfare Plan

PBSD Docket No.: 18-23-663

PWBP Case No.: 50-18557

Date Field Referred to OE: 1/18/81

Date OE Referred to SOL: 2/26/81

OE Recommendation to SOL: Legal opinion requested.

Date SOL Returned to OE: 4/7/81

Date OE Sent to Field: 8/17/81

Date Field Initiated Voluntary Compliance: 9/23/81

Final Disposition: AO's letter was a closing letter and no response was requested. The information has been placed in the AO's intelligence file for future follow-up.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 159

Case Title: Illinois Healthcare Association Employee Benefit Plan

PBSD Docket No.: 18-25-669

PWBP Case No.: 50-18576

Date Field Referred to OE: 3/23/81

Date OE Referred to SOL: 6/24/81

OE Recommendation to SOL: Litigation

Date SOL Returned to OE: 7/20/81

Date OE Sent to Field: N/A

Date Field Initiated Voluntary Compliance: N/A

Final Disposition: OE referred criminal allegations to DOJ on 10/19/81. On 12/9/81, letter was issued to the Illinois Insurance Department that the plan was a MET and not a covered plan.

CASES RETURNED FROM THE SOLICITOR WITH SUGGESTION
FOR VOLUNTARY COMPLIANCE DURING CALENDAR
YEAR 1981

Item No.: 160

Case Title: PECA-IBEW Education, Annuity and Pension Plans

PBSD Docket No.: 18-21-673; 18-21-676

PWBP Case No.: 73-1157; 73-1160

Date Field Referred to OE: 4/3/81 and 6/26/81

Date OE Referred to SOL: 7/7/81

OE Recommendation to SOL: Litigation

Date SOL Returned to OE: 8/19/81

Date OE Sent to Field: 8/19/81

Date Field Initiated Voluntary Compliance: 12/1/81

Final Disposition: Additional investigation was conducted in November 1981. On 12/1/81 the Education Plan was notified of some of the violations. OE was recently notified by the San Francisco Region that they are having difficulty in obtaining voluntary compliance. The supplemental investigation on the purchase and use of property valued at over \$1 million indicates imprudence. OE has received a memorandum from the area office which recommends that action be taken to force the plans to comply with ERISA. OE is awaiting a recommendation from the Region with respect to disposition.

Bakley Document #2

PHILADELPHIA REGION CASES

List 1

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRED IN LAST SIX MONTHS	COMMENTS
1. Fourco Glass Company Pension Plan for United Glass and Ceramic Workers Case No. 21-5591	5/15/79	Issue Demand Letter	3/11/81	The date of 3/11/81 is 6 years from the date of the violation. Potential statute of limitations problems were noted in the transmittal memorandum forwarded to SOL on 5/15/79.
2. Charles F. Smith and Sons, Inc. Stock Bonus Plan Case No. 20-7150	1/9/81	Litigation	1/11/80	SOL's closing memorandum of 4/1/81 to OE did not identify a date on which it thought the Statute expired. SOL's closing memorandum to OE of 3/26/81 suggested that a Statute problem could be raised based on the Form 5500 disclosure (received by D.L. on 1/11/77) of investment in sponsor stock. Referral of case was made because the plan, a stock bonus plan, was not. ipso facto in violation because of such investment.

Chicago REGION CASES

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRED IN LAST SIX MONTHS	COMMENTS
Part 3 p 1 Teamsters' L.U. 299 Severance Fund Case No. 52-6762	12/16/77 6/18/79 (addl. info. ref.)	Litigation to recover plan losses.	July 22, 1979	SOL Opinion Memo- randum dated 4/24/81, noting 413 Statute expiration - rec- ommended investi- gation of other locals experiencing similar situation involving purchase of whole life policies. Origin- ally reported to Administrator as Significant Case.
Laundry Workers L.U. 46 Welfare Fund Case No. 50-16835	10/18/79	Submission of Notice Letter (backed by litigation if voluntary compliance not achieved)	December 1980 (see com- ment)	Reported to Adminis- trator as Significant Case. Plan paid \$124,000 in salaries of Local Union business agents over 3 year period. One year of salaries is barred because of 413 limita- tions per SOL staff attorney. (OE awaiting final SOL Opinion Memo.)

Kansas City REGION CASES

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRED IN LAST SIX MONTHS	COMMENTS
East Texas S & L Employee Profit Sharing Plan Case No. 63-7973 FBSD No. 18-75-439	8/16/79	Voluntary Compliance	11/9/80	Investigation of Section 404 and 406(b) issues initiated 11/9/77. Notice letter sent 4/9/79.
Barton, Inc., and Continental Slipsters, Inc., Profit Sharing Plan Case No. 60-6204 FBSD No. 18-29-460	10/1/79.	Voluntary Compliance	9/30/80 on Arvin and Dunn loans. None on Lewis loan because violation continues	Plan purchased employer stock on 12/5/75, and gave notes in violation of Section 406(a)(1)(B).
Gilbert Clinic, Inc., Employees Profit Sharing and Thrift Plan Case No. 63-8234	2/12/80	N/A	3/27/81	Date is three years from the time the matter was brought to the attention of the AO by attorneys representing certain participants.

4

San Francisco REGION CASES

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRED IN LAST SIX MONTHS	COMMENTS
First Federal Savings and Loan Association Alaska Mutual Savings Bank Re: Alaska Teachers - Employer Pension Trust Anchorage, Alaska Case No. 71-5579(48)	2/26/81	OE made no recommendation; however, it was suggested that a waiver of the statute of limitations be considered in order to provide more time for review of the ROI and that DOL options be immediately considered.	3/1/81	DE internal memo with copy to SOL dated 3/2/81 indicates that Eccles discussed possible action with either Monica or Norman on 2/27/81 and that the decision to take no action was based on the limited amount of time available, no evidence of losses, and the IRS awareness of the prohibited transactions.
Bayliner Marine Profit Sharing Trust Arlington, Washington Case No. 71-4751	7/28/79 and 7/8/80	Litigation	Statute expired on retail store issue in 8/80	Case involves lease of plan assets to plan sponsor which appears to be a continuing violation. Another issue in case involves the plan's purchase of a retail store from a plan trustee on 11/19/75 or 5/26/76. Voluntary Compliance was attempted on 4/17/80, however trustees refused to comply and case was sent back to SOL on 7/8/80. Plan's 1975 Form 5500 received by DOL in August 1977.

W. J. K. K. K. K.

PHILADELPHIA REGION CASES NOT IN LITIGATION PENDING IN SOL

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
1. National Maritime Rivers Pension Plan Case No. 21-5338	1/5/79	Unspecified enforcement action.	10/12/81	Date used for statute expired is 3 years from the date when C.O. had assembled information sufficient to establish actual knowledge of violation. The six-year provision of 413 would in our judgment give a date of 1/28/82.
2. Local Union 1407 (Retail Clerk) Health & Welfare Trust Fund, Pension Fund, Legal Benefits Plan Case No. 21-5384	4/18/79	Litigation	7/30/79	Date used is 3 yrs. from PWP receipt of MSE info. No attempt at a 6-year date is appropriate because of the possible application of the special rule of 413 regarding concealment, etc. Subpenas were issued in this case.
3. Bell Test Force Cases Case Nos. 22-9428/9429 (Teamsters L.U. 639) Case Nos. 22-9533/9534 (Teamsters L.U. 5) Case Nos. 22-8931/8932 (Teamsters L.U. 311) Case Nos. 22-8929/8930 (Teamsters L.U. 311) Case Nos. 22-9094/9095 (Painters Union)	11/20/79 12/27/79 1/4/80 1/10/80 1/25/80	Notice letter No violation Notice Letter No violation Notice Letter	1/16/81	Date of 1/16/81 is three years from the date of a DRE financial analysis of Forms 5500 in which the broad outline of the violations was first apparent. The six-year computation under 413 is perhaps inappropriate because of possible concealment, etc. Subpenas were issued in this case.

PHILADELPHIA REGION CASES NOT IN LITIGATION PENDING IN SOL

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
4. Severance Pay Plans of Paperworkers, Teamsters, & Retail Employees Unions Case No. 20-7129 Case No. 20-7130 Case No. 20-7131	7/23/80	Litigation if voluntary compliance unsuccessful.	2/22/81	Date is based on the fact that the broad outlines of the asserted violations were made known to PRRP personnel by a UMSE Compliance Officer on 2/22/78. Again, the six-year provision is arguably inapplicable because of possible concealment. Sulzpanas were issued in this case.
5. Local 12 Sheet Metal Workers Pension Fund Case No. 21-6083	12/27/79	Litigation	6/11/80 or open ended	Date is three years from the date of case opening. It appears that a date in July 1980 may also be applicable based upon a DGE analysis of the Form 5500 in July of 1977; however, the primary documents are in SOL & cannot be re-viewed to determine more precisely what the 5500 disclosed. If payments on prohibited loans continue, Statute may be considered open-ended.
6. Mellon Bank Commingled Pension Trust Case No. 21-6966	12/22/80	Review for violations	3/21/82	Date chosen is three years from date of case opening. The Forms 5500, filed earlier, are not sufficiently indicative to be used as a starting date.

PHILADELPHIA REGION CASES NOT IN LITIGATION PENDING IN SOL

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
7. Roofers Local 30 & 30B Vacation Trust Funds Case No. 20-6411 Case No. 20-6938	11/8/78	Litigation	Open-ended	Case involves a continuing violations failure to file reporting instruments required by ERISA.
8. Sheet Metal Workers Trust Fund (SASNU) Case No. 22-9679	4/23/80	Litigation	8/16/82	Date is three years from the time when the investigating Area Office received the basic information which underlies the violation.
9. Horace Longacre, Inc. Profit-Sharing Plan Case No. 20-7258	11/28/80	Litigation	1/30/82	Date is 3 yrs. from the filing of the Form 5500 for FYE 6/30/78 in which the transaction was indicated.
10. Ross Industries, Inc. ESOP Case No. 22-9641	10/3/80	Litigation	6/5/82	Date is 3 yrs. from date of complaint being received by field office.
11. IBEW Local 666 Benefit Trust Fund Case No. 22-8848	12/30/80	Litigation	3/5/81	Date is 3 yrs. from receipt of complaint describing the transaction in question.
12. International Union of Operating Engineers Case No. 21-6050	1/25/80	Notice Letter	Open-ended	A continuing violation exists in the plan's failure to diversify.
13. Bassett Furniture Industries Employee Savings/Retirement Plan Case No. 22-9808	8/19/80	Litigation	7/28/81	Date is 3 yrs. from date of exemption request disclosing violation.

PHILADELPHIA REGION CASES NOT IN LITIGATION PENDING IN SOL

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
14. Profit-Sharing Plan of Altamare Enterprises Case No. 20-7139	2/10/81	Litigation	1/1/81	Case file retained in OE is without exhibits and the violations are so diverse that Statute may be closed on some acts and open on others. Date chosen is 6 yrs., solely based on fact of violations existing from 1/1/75.
15. Ludwig Hornold Mfg. Co. Salaried Employees Pension Plan Case No. 20-7357	4/28/81	Legal opinion	1/17/82	Date is 3 yrs. from plan's filing of exemption application with the Department.
16. Ralph A. Vecn Pension Plan Case No. 21-7004	7/7/80	Monitor ERGC proceedings and consider DOJ referral	10/31/82	Date is 3 yrs. from date of notice received by Area Office of bankruptcy proceedings of plan sponsor, involving request to terminate pension plan.

New York REGION CASES NOT IN LITIGATION PENDING IN SOL AS OF MAY 15, 1981
Pg. 1 of 2

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D) (See Note 1. Below)	COMMENTS
1. Taper Industry Insurance 30-7626	9/17/77	Issuance of Demand Letter	8/29/80	Legal questions concerning coverage, plan structure, definition of plan assets. Investigative time first charged 8/29/77.
2. Korvetts Retirement Plan 30-7314	12/11/78	Original recommendation was for legal opinion and issuance of a demand letter.	9/15/80	SOL referred case to PAC. Investigative time first charged 9/15/77.
3. IIA Local 976 32-4876	6/29/79	Requested legal opinion.	9/19/80	Involves dual compensation, unreasonable administrative expenses. Investigative time first charged 9/19/77.
4. Iron Workers 31-12140	8/16/79	Requested legal opinion	January 1982	Investigative time first charged January 1979.
5. Smith DeBeise 30-7717	8/17/79	Demand Letter	9/19/80	Demand Letter issued. Additional inquiry by AO completed. Investigative time first charged 9/19/77.
6. International Production Service 30-9162	2/13/80	Litigation	July 1982	Investigative time first charged July 1979.
7. Buffalo Carpenters Health & Welfare/Pension Plans 35-5347 35-5391	2/22/80	Voluntary Compliance approval.	November 1982	Investigative time first charged November 1979.

Note 1. Based on three years from date when substantial investigative time was first charged as reported on FARS. Statute expiration date may not apply due to A.) "continuing violations" theory or B), sufficient disclosure on 5500 documenting violation.

* Cases reported to administrator as "significant."

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D) (See Note First Page)	COMMENTS
*8. Nabisco Plan 32-6070	7/2/80	Demand Letter	December 82	Case being reviewed by Regulation Section. Investigative time first charged December 1979.
*9. Retail Store Employees III 1262 32-5187	9/2/80	Litigation	June 82	Trustees recovered excessive administrative fees. Investigative time first charged June 1979.
*10. Westchester Teachers Severance Fund 30-9053	9/22/80	Issuance of Voluntary Compliance Letter.	July 82	Investigative time first charged July 1979.
*11. Banco DePonce 37-2357	9/23/80	Litigation	April 83	Investigative time first charged April 1980.
*12. Yankee, Inc., Pension Plan 31-12896	10/9/80	Litigation	July 83	Investigative time first charged July 1980.
*13. Lee Dying Retirement Fund 35-5579	10/30/80	Litigation	May 83	Investigative time first charged May 1980.
*14. New England Joint Board 31-12834	12/30/80	Litigation	April 83	Investigative time first charged April 1980.
*15. Warner Lambert Retirement Plan 32-6146	1/7/81	Legal Opinion	April 83	Issue similar to Nabisco. Investigative time first charged April 1980.
* Cases Reported to Administrator as "Significant."				

Atlanta

REGION CASES NOT IN LITIGATION PENDING IN SOL

Date: May 14, 1981
(Kennelly/Godfrey).

Page 1 of 6

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
National Sales, Inc., Employee Profit Sharing Plan Case No. 41-06090(48) PBSD No. 18-41-484	10/24/79	Notice Letter to trustees	No date(s) certain	Essence of some violations contained in plan's annual report for PYE 12/31/75, due DOL by July 31, 1976. However, violations at last report were "continuing" and one otherwise prohibited lease transaction appears exempt under Act 414(c)(2).
Savannah IIA Employer's Pension Plan Case No. 40-07668(48) PBSD No. 18-19-489	11/8/79	SOL take action to restore \$256,211 to the plan because of under-reporting of hours worked	June 7, 1981*	Date is three years from date of indictment of 22 officers of IIA (6/7/78) Southern District of Florida (see 42-4605).
Savannah Maritime Association IIA Plan Case No. 40-09547(48) PBSD No. 18-19-489	11/8/79	Included in above case.	June 7, 1981	The 6/7/78 date of indictment is clearly not an absolute date from which the statute would run in this and the other IIA cases. The actual dates could be later or earlier depending on the particular violations.
Tampa Maritime Association IIA Pension Plan Case No. 42-04596(48) PBSD No. 18-17-538	11/9/79	Take action to prevent further loss to plan.	November 16, 1981 or June 7, 1981	The date of 11/16/81 is 3 years from date complainant advised Miami AD that contributions of an employer and Local 1402 were not being made (see p.2 ROI of 10/19/79, file 42-4617); the date of June 7, 1981, is 3 years from date of indictment.
1/ Most conservative date(s) used. Some violations may be "continuing," thereby tolling statute of limitations.				

REGION CASES NOT IN LITIGATION PENDING IN SOL

Atlanta

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
ILA Jacksonville L/S Pension, Health and Vacation Plans Case Nos. 42-04605(48) 42-04606(48) 42-04607(48) PBSD No. 18-17m-493	11/21/79	Remove trustee, Landon Williams, and restore plan assets.	June 7, 1981	Date is three years from date of indictment of 22 officers of ILS, Southern District of Florida.
ILA Jacksonville W/H Pension, Health and Vacation Plans Case Nos. 42-04608(48) 42-04609(48) 42-04610(48) PBSD No. 18-17m-526	2/14/80	Remove trustee Landon Williams	June 7, 1981	Date is three years from date of indictment of 22 officers of ILA, Southern District of Florida.
South Atlantic ILA/GAI Fund Case No. 42-04735(48) PBSD No. 18-17m-527	2/14/80	Same as above ILA cases 42-04608, 42-04605	June 7, 1981	Date is three years from date of indictment of 22 officers of ILA, Southern District of Florida.
Tampa ILA Vacation and Welfare Plans Case Nos. 42-04617(48) 42-04618(48) PBSD No. 18-17m-538	3/6/80	Included in above Tampa Case 42-4596	November 16, 1981 or June 7, 1981	The date of 11/16/81, is three years from date complainant advised Miami AO that contributions of an employer and Local 1402 were not being made. (See p.2, ROI of 10/19/79, File 42-4617.)
Waterfront Employers ILA Pension Plan Case No. 40-09563(48) PBSD No. 18-67-536	3/6/80	Same as and included in above Case 42-4596	November 16, 1981 or June 7, 1981	The date of June 7, 1981, is 3 years from date of indictment of 22 officers of ILA, Southern District of Florida.

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
Waterfront Employers ILA Welfare and Vacation Plans Case No. 40-09566(48) PBSD No. 18-87-536	3/6/80	Litigation	November 16, 1981 or June 7, 1981	The date of 11/16/81, is three years from date complainant advised Miami AO that contributions of an employer and Local 1402 were not being made. (See p.2, ROI of 10/19/79, File 42-4617.) The date of June 7, 1981, is 3 years from date of indictment of 22 officers of ILA, Southern District of Florida.
ILA S.E. Florida Ports GAI Fund Case No. 42-04913(48) PBSD No. 18-18-556	4/28/80	This case be considered with the Tampa and Jacksonville cases above	June 7, 1981	Date is 3 years from date of indictment of 22 officers of ILA, Southern District of Florida.
The Austin Company, Inc., Profit Sharing Plan Case No. 41-06895(48) PBSD No. 18-70-561	5/14/80	Notice letter be sent to trustees regarding prohibited loans.	February 10, 1981 November 19, 1982	Dates used represent 3 years from earliest and latest party in interest loans shown in ROI. However, earliest date DOL could have had knowledge of early loans was on receipt of 5500 for period ending 6/30/78. Also loans may be "continuing."
Unaka Co., Inc., Employees' Profit Sharing Plan Case No. 41-06923(48) PBSD No. 18-70-561	5/14/81	Notice letter be sent to trustees regarding prohibited loans.	March 31, 1979 March 29, 1982	Dates used represent 3 years from earliest and latest prohibited transactions shown in ROI. DOL could have had constructive

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
Part 2 P3 Genesco Retirement Plan Case No. 41-06731(48) PBSO No.	5/23/80	Obtain real estate appraisal to determine value of property	July 31, 1982	knowledge of some transactions from 5500s Some transactions may be "continuing." Date used is 3 years from date of principal potential prohibited transaction. (Sale of leasehold interests to plan by plan sponsor.)
p.19 Mason and Dixon Lines Retirement and Social Security Extension Plans Case No. 41-06900(48) PBSO No. 18-70-566	5/25/80	Removal of trustees and recover losses from trustees.	No date(s) certain	Case involves multiple apparent prohibited transactions among affiliated entities and the plans which were last reported as continuing.
ILA SE Florida Ports Pension, Welfare and Vacation/Holiday Plans Case Nos. 42-04603(48) 42-04604(48) 42-04610(48) PBSO No. 18-18-556	5/28/80	Same as above ILS cases.	June 7, 1981	Date is three years from date of indictments of 22 officers of ILA, Southern District of Florida.
Hughes Supply, Inc., Profit Sharing Plan Case No. 42-04920(48) PBSO No.	7/10/80	Request SOL determine if oral contract is binding in Florida.	No date(s) certain	Principal issue is lease between plan sponsor and plan which may be exempted by Act 414(c)(2) and therefore not in violation until 6/30/84. If not exempt, it remains a "continuing" violation.

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
North Carolina Ports ILA Pension, Welfare and Vacation Plans Case No. 40-09793(48) PBSD No.	7/14/80	SOL prepare Notice Letter to trustees demanding payment of all hours they failed to collect from employers.	June 7, 1981	Date is three years from date of indictments of 22 officers of ILA, Southern District of Florida.
Brevard Engineering Co., Pension and Profit Sharing Plans Case Nos. 42-04925(48) 42-04943(48) PBSD No. 18-18-592	7/18/80	SOL prepare demand letter to trustees to discontinue PII loans and recover outstanding loans.	No date(s) certain	"Continuing" potential prohibited transactions.
Enterprise Aluminum Co., Group, Inc., Plan #1 Case No. 40-10335(48) PBSD No. 18-19-616	9/11/80	Request interpretative opinion from SOL on case.	May, June, July 1983 (date not certain)	Files and bank records do not show exact date the rebate was received by employer, only between May and July 1975.
Ullenburg, Corp., Profit Sharing Plan Case No. 41-07040(48) PBSD No. 18-70-617	9/12/80	SOL draft appropriate letter to trustees to have stock appraised and any losses repaid.	No date(s) certain	Violations began as of 6/6/75, but were last reported as "continuing."
Operating Engineers Local 674 Pension Fund Case No. 42-4285 42-05047(48) PBSD No. 18-18-613	9/18/80	Case be settled by voluntary compliance.	7/19/82	7/19/79 is date of letter from union attorney to DOL requesting an advisory opinion on the plan making mortgage loans to participants.

7/27/81
3
P-4

REGION CASES NOT IN LITIGATION PENDING IN SOL

Atlanta

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
U.F & C.W. Union (District Union 657) and Employers Health and Welfare Trust Fund of Florida Case No. 42-04770(48) PBSD No. 18-18-640	10/28/80	SOL review case to verify if compliance letter should be sent to trustees.	July 1, 1981 (or earlier)	Date is 3 years from date of renewal of non-experience rated insurance contract with excessive premiums (the principal issue in case). It is arguable that \$500 for 1976 may have given DOL constructive knowledge of transaction.
Houchens Industries, Inc., and Consolidated Subsidiaries Employees' Trust Case No. 41-07031(48) PBSD No. 18-31-649	12/5/80	Request SOL review issues re: loans	No date(s) certain	Potentially prohibited loans are involved which were last reported as "continuing."
Film Transit, Inc., Profit Sharing Plan Case No. 41-07194(48) PBSD No. 18-72-648	12/5/80	Letter to trustees to rescind prohibited transactions (loans)	No date(s) certain	At last report potential violations were "continuing."
Mississippi Chemical Co., Pension Plan Case No. 41-07133(48) PBSD No.	2/18/81	Requested opinion on nature of and effect of "patronage refunds" to plan from cooperative in form of "capital equity credits."	No date(s) certain	If violations exist, they are continuing (N.B. the SOL rendered an opinion on 4/23/81 but later requested additional information).
Public Super Markets, Inc., Profit Sharing Plan Case No. 42-04993(48)	3/5/81	Opinion on further investigation.	No date certain-leases remain in effect	Involves Section 406(a) and 407 violations in leases

Chicago REGION CASES NOT IN LITIGATION PENDING IN SOL

17

132

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE (S)(D)	COMMENTS
Chicago Truck Drivers Pension and Welfare Funds Case No. 50-18070	7/6/79 8/17/79 (add'l. info. ref.)	Submission of Notice Letter	October 1981	Investigation commenced 10/31/78. Reported to Administrator as Significant Case
Qualified Real Estate Funds Case Nos. 51-4488 -4489 -4490 -4491 -4492	8/22/79 2/12/81 (add'l. info. req. by SOL)	Legal analysis of issues to determine further investigation of plans with similar situation.	July 1981	Investigation commenced 7/12/78. SEC referral 8/78. Reported to Administrator as Significant Case
United Castings, Inc., Defined Benefit Plan Case No. 53-10377	11/9/79 7/10/80 (add'l. info. ref.)	Litigation	March 1981	Investigation commenced 3/78.
Riggers L.U. 575 Vacation and Holiday Fund Case No. 52-7751 page 3 p. 16	2/11/80	Litigation	October 1981	Investigation 10/4/78.
International UAW Staff Pension Fund Case No. 52-8023	4/21/80	Litigation	October 1982	Investigation commenced 10/17/79. Meeting held 4/81 between OE, SOL & Administrator. Decision to redraft tentative SOL memo and to prepare Notice Letter as to court injunction to bar future plan low interest loans. Reported to Administrator as Significant Case.

Chicago

REGION CASES NOT IN LITIGATION PENDING IN SOL

18

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S)(D)	COMMENTS
Michigan Conference of Teamsters Health & Welfare Trust Case No. 52-7530	7/8/80	Submission of Voluntary Compliance Letter	OE does not have sufficient information	Reported to Administrator as Significant Case. Initial case opened 11/76, closed 1/78. Reopened 8/79.
PART 3 Rigger's Trust Fund Case Nos. 52-7753 -7754 p.3	7/10/80*(see comment)	Litigation	October 1981	Case originally referred to SOL 11/20/79. SOL Opinion dated 2/7/80, recommending submission of Voluntary Compliance Letter. Response by plan sought DOL retraction of letter. Matter again referred to SOL 7/10/80 seeking opinion as to litigation. Investigation commenced 10/16/78.
PART 3 Ohio Carpenters (Carpenters Central Col. & Adm. Agency) Health & Welfare Fund Case No. 53-11248 p.35	7/11/80	Submission of Notice Letter (backed by litigation if voluntary compliance not achieved).	April 1982	Reported to Administrator as Significant Case Investigation began 4/26/79.
Engler, Schwechter, etc. Case No. 50-18549	2/24/81	Legal analysis and submission of voluntary compliance letter.	September 1982	Investigation began 9/14/79.
Service Local 189 Welfare Plan Case No. 50-18557	2/26/81	Legal analysis and submission of voluntary compliance letter.	OE does not have sufficient information	

Kansas City

REGION CASES NOT IN LITIGATION PENDING IN SOL

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
Feilen Meats Company ESOP Case No. 62-6197 PBSD No. 18-28-409	5/30/79	Voluntary Compliance	12/19/81	Section 404 transactions occurred 11/1/77 and 10/1/78. Investigation initiated 12/19/78.
East Texas S & L Employee Profit Sharing Plan Case No. 63-7975 PBSD No. 18-75-439	8/16/79	Voluntary Compliance	11/9/80	Investigation of Section 404 and 406(b) issues initiated 11/9/77. Notice Letter sent 4/9/79.
Dillard Department Stores, Inc. Case No. 64-4317 PBSD No. 18-09-444	8/22/79	Voluntary Compliance	12/13/81	Investigation of Section 404 issues initiated 12/13/78.
Austin Mortgage and Trust Company Thrift Plan Case No. 63-9195 PBSD No. 18-73-457	9/18/79	Voluntary Compliance	None- violations continue	Involves Section 406(a)(1)(B) violations. Notes purchased on 5/8/75, 8/12/78, 12/5/78 and 6/5/79.
Borton, Inc., and Continental Slipform, Inc., Profit Sharing Plan Case No. 60-6204 PBSD No. 18-29-460	10/1/79	Voluntary Compliance	9/30/80 on Arvin and Dunn loans. None on Lewis loan because violation continues.	Plan purchased employer stock 12/5/75, and gave notes in violation of Section 406(a)(1)(B).

Kansas City

REGION CASES NOT IN LITIGATION PENDING IN SOL

20

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
Meatcutters and Butcher Workmen of N. America District/Local Union 340 Health and Welfare Fund Case No. 60-6008 PBSD No. 18-43-490	11/8/79	N/A	10/29/81	Date chosen is 3 years from the date of case opening, in the absence of immediately available information which might indicate a different date is more appropriate.
First Federal S & L of Waco Case No. 63-9255 PBSD No. 18-73-471	10/12/79	Notice Letter	4/22/82	Date chosen is 3 years from the date Area Office determined that plan's current portfolio is insufficiently diversified.
Babcock and Wilcox Employee Retirement Plan Case No. 64-4687 PBSD No. 65-134	1/31/80	Notice Letter	10/24/82	Date is 3 years from the time when, it appears, the existence of a violation was clearly established.
Gilbert Clinic, Inc., Employees Profit Sharing and Thrift Plan Case No. 63-8234	2/12/80	Review for violations	3/27/81	Date is 3 years from the time the matter was brought to the attention of the AO; by attorneys who represented certain participants.
American State Bank Employees Profit Sharing Plan Case No. 63-9460 PBSD No. 18-73-530	2/15/80	Notice Letter	Open-ended	It appears from the ROI that a continuing violation is involved.

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
~~PWT~~ Jim Wilson, Company and Homestead Distributing Company 5 ESOP and Money Purchase Plans P.24 Case Nos. 62-6508 62-6786 PBSD No. 18-42-387	7/15/80	Demand Letter to be signed by FWBP Administrator	7/31/82 (3 years after filing of 1979 5500-C) to 3/11/83 (3 years after Homestead investigation commenced). Expiration date extends each year thereafter for continuing outstanding balances, i.e., violations continue.	Series of Section 406 ERISA loans beginning 1/28/78, some of which are reported per 1978 5500-C which would have been filed 7/31/79, if filed in timely manner. Large sums remain outstanding.
~~PWT~~ Monarch Tile Manufacturing, Inc., Retirement Trust and ESOP 3 Case No. 63-9769 P.37 PBSD 18-73-595	7/22/80	Voluntary compliance notice letter. Losses do not warrant litigation. Legal opinion requested.	7/31/82 - 3 years after filing of 1978 5500 on which case opening is predicated.	Section 406 and 414(c) transition sale issues involving lease renewals. S/L dates based on 3 year period subsequent to plan filing of 1978 5500 Annual Report on which case opening is predicated.
Elm Distributors Profit Sharing Plan Tops Unlimited, Inc., Profit Sharing Plan Case No. 61-4463 61-4731	10/22/80	Injunctive relief/litigation	6/27/82 - 6/3/83 (3 years subsequent to DOL examination which showed outstanding loan balances at 7/31/79, and 11/1/79 for each plan. Expiration extends each year thereafter for continuing outstanding balances; i.e., violations continue.	Section 404 (prudence) and 406 (party in interest/self dealing) ERISA issues involving several hundred loans which remain outstanding in large sums as of 2/31/79.
A.J. Rod Company, Inc., Profit Sharing Plan Case No. 63-8483 PBSD No. 18-74-625	9/29/80	Voluntary compliance notice letter	5/8/81 (3 years from date complaint received) or possibly 7/26/81 (3 years from date DOL investigation opened) or possibly 12/20/82 (3 years from date of receipt of information)	Section 404, ERISA, diversification, exclusive benefit rule and current market valuation issues.

— Kansas City — REGION CASES NOT IN LITIGATION PENDING IN SOL

22

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
Almont, Inc.; ESOP Case No. 61-4321 PBSD No. 18-13-529	2/15/80	Voluntary Compliance	1/23/82	Involves Section 406(a)(1)(B) and 408(b)(3) transactions in 12/75. Investigation initiated 1/23/79.
First National Bank of Jacksonville First State Bank of Rusk Profit Sharing and Money Purchase Plans Case No. 63-9396 PBSD No. 18-73-557	5/8/80	Voluntary Compliance	9/24/82	Investigation of Section 406(b) issue initiated 9/24/79.
Laurel Bankshares Profit Sharing Plan Case No. 60-6386 PBSD No. 18-43-569	6/11/80	Litigation		Involves a mortgage loan in violation of Section 406.
Security Life and Accident Pension Plan Case No. 61-4485 PBSD No. 61-182	6/20/80	Voluntary Compliance		Involves mortgage loans in violation of Section 406(a)(1)(A).
All-State Employees Trust Plan Case No. 64-4306 PBSD No. 18-32-643	11/3/80	Monitor private litigation		Involves mortgage loans in violation of Section 406(a)(1)(B)
Pioneer Bank Profit Sharing Plan Case No. 64-4777 PBSD 18-33-646	11/28/80	Voluntary Compliance		Involves mortgage loans in violation of Section 406(a)(1)(B).

Kansas City REGION CASES NOT IN LITIGATION PENDING IN SOL

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
Tyler Corporation Master Retirement Income Trust Case No. 63-9729 PBSD No. 61-195	12/10/80	Voluntary Compliance	None-violations continue because plan still holds the investments	Involves Section 406(a) violation of investing in plan sponsor's collective trust.
Sheetmetal Workers Local Union 9 Vacation Plan Case No. 61-4728 PBSD No. 61-196	12/15/80	Voluntary Compliance	None-violations continue because plan has not complied with ERISA	Involves plan's failure to report and disclose under ERISA. Coverage under review.

San Francisco REGION CASES NOT IN LITIGATION PENDING IN SOL

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
PART 3 Pipe Trades Apprenticeship Fund Burlingame, California Case No. 70-5771(48)	4/5/78	Opinion requested so that Voluntary Compliance could be attempted.	5/16/80	Case involves a \$170,000 transaction for which the plan withdrew its exemption application on 5/16/77. The Area Office case was opened 6/6/77. Case is currently pending in SOL and OE has requested its return.
Northern California Laborers Benefit Fund San Francisco, California Case No. 70-6627(43)	7/12/79	Litigation	2/16/82	Case involves approximately \$300,000 in unnecessary administrative expenses; however, the practice was discontinued shortly after the case was referred to SOL. Investigation initiated 2/16/79.
Bayliner Marine Profit Sharing Trust Arlington, Washington Case No. 71-4751	7/26/79 and 7/8/80	Litigation	Statute expired on retail store issue in 8/80	Case involves lease of plan assets to plan sponsor which appears to be a continuing violation. Another issue in case involves the plan's purchase of a retail store from a plan trustee on 11/19/75 or 5/26/76. Voluntary compliance was attempted on 4/17/80, however, trustees refused to comply and case was sent back to SOL on 7/8/80. Plan's 1975 Form 5500 received by DOL in August 1977.

San Francisco REGION CASES NOT IN LITIGATION PENDING IN SOL

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
Pacific Architects ESOP 72-8035	10/12/79	Voluntary Compliance	3/1/82 possibly but OE doesn't have sufficient information.	Section 406(a) transaction occurred on 3/1/76.
Shamrock Foods Co. 72-8014	2/14/80	Voluntary Compliance	None - Violations continue	Keyman Policy purchased 12/17/74 and premiums paid annually.
Sambo's Restaurants, Inc. ESOP 72-8197	2/27/80	Voluntary Compliance	10/10/82	Investigation of Section 404 issue initiated on 10/10/79.
Southland Union Medical Fund 72-7950	4/24/80	Litigation	2/12/82	Investigation initiated 2/12/79 on excessive commissions.
So. California Retail Clerks Joint Trust 72-7651	6/10/80	Voluntary Compliance	9/15/82	Investigation initiated 9/15/78 of Section 408(b) (2) issues.
Palm Mortuary Retirement Plan 72-8021	6/22/80	Litigation	None-Violations continue	Violations of 407 and 406.
Construction Laborers of Southern California 72-8092	6/30/80	Voluntary Compliance	8/83 possibly. OE doesn't have sufficient information.	Transaction occurred in 8/77. Investigation began 6/29/79.
San Joaquin Administrators 71-5127	7/17/80	Litigation	6/15/82	Investigation initiated 6/15/79 of Section 404(b) (3) issue in commission payments.
Golden States Mutual Life Insurance 72-8420	7/23/80	Litigation	2/25/83	Investigation of Section 404 and 406(b) issues was initiated on 2/25/80.

San Francisco

REGION CASES NOT IN LITIGATION PENDING IN SOL

CASE TITLE AND NUMBER	DATE REFERRED TO SOL	OE RECOMMENDED ACTION	DATE STATUTE EXPIRE(S) (D)	COMMENTS
Western Pacific Medical Corporation 70-6992	9/10/80	Voluntary Compliance	2/1/83	Investigation of Section 404 Issues initiated on 2/1/80.
Fort Vancouver Plywood Profit Sharing Plan 71-5333	9/23/80	Voluntary Compliance	None-Violations continue	Demand notes outstanding
Kaiser Steel Group Insurance 70-6969 18-11-644 PK. 2 P. 4	11/14/80	Voluntary Compliance	None-Violations continue	Insurance policy still in effect. Involves Section 404 issue.

The CHAIRMAN. When was this list prepared?

Mr. RYAN. Mr. St. Cyr's list or the list that we prepared, Senator?

The CHAIRMAN. I think we are talking about St. Cyr.

Mr. RYAN. I think it was some time during the summer of 1981.

The CHAIRMAN. At whose request was this prepared?

Mr. RYAN. I believe it was at Mr. St. Cyr's request. We had discussed, immediately upon our appointment—that is, my appointment, Mr. Dotson's appointment, and Mr. St. Cyr's appointment—the need for additional enforcement activity in the ERISA program. Mr. St. Cyr, I believe, asked his staff—this is before Mr. Clayton joined the Department—to provide him with a status report. He gave me a copy of the status report and a memorandum saying, "What have you all done with these cases in the Solicitor's Office, and what do you intend to do?"

We sat down, we discussed his document. I asked our staff people to provide a detailed response to his document, which we did. We then met again 2 weeks later.

The CHAIRMAN. We may be mistaken ourselves. We thought it was Hilary Shepley but, be that as it may, we can always check that out.

Now as I understand it, you assumed your position as Acting Solicitor of Labor in late January 1981. Am I wrong on that?

Mr. RYAN. Yes, Senator. I was Acting Deputy White House Counsel at that time.

The CHAIRMAN. I see. You were confirmed, as I recall, on March 12 of last year.

Mr. RYAN. That is correct, Senator.

The CHAIRMAN. OK. As the Department's chief legal officer, did it ever occur to you between January and May 1981 that many of your enforcement cases could be encountering statute of limitations problems, or that a number of your enforcement cases could be encountering such difficulties?

Mr. RYAN. I would like to answer that question broadly because it goes to the entire issue which I think is the subject of today's hearing, at least one part of it.

The CHAIRMAN. Sure.

Mr. RYAN. The entire program of ERISA, first of all, involves very, very complex litigation. The issues are very complex and as you have said, it goes to the very heart—as far as I am concerned—of what this administration, the Reagan administration at the Department of Labor, is all about. We are interested in protecting participants, workers who are involved, and securing their hard-earned money which has been invested in this program.

The situation we found when we came in is different than it is now. We found that the program—that is, coordinated activity between Mr. Clayton's predecessor and my predecessor, the prior Solicitor—was one of developing case law in the ERISA area. Many, many issues in the form of cases were submitted to Ms. Gallagher's division. The intent at that time was for her staff to review the cases to determine what cases should be brought based on its precedential value.

The CHAIRMAN. In other words, they wanted to establish a line of precedent so people would know what the law really means.

Mr. RYAN. As I understand it, Senator, that is correct. In that regard, you would find that on any different issue—for instance, the issue of purchase of whole-life annuities by pension plans, an issue that the program was very interested and the Solicitor's Office was very involved in a couple of years ago—the Solicitor's Office was referred multiple cases on that issue and asked to select the best case to bring suit.

Now as far as I am concerned, unfortunately the Solicitor's Office—not to their credit, in my estimation—let the cases that they did not go forward with remain on an open docket. They did not close the cases. There are multiple issues in the ERISA program, and when you are dealing with multiple issues you therefore have different statutes of limitation with which you are dealing with on each separate issue. As for Mr. Cyr's list, the cases that were closed during 1981 were closed either through voluntary compliance, because that was the best way to handle it, or because we did not have a case, not because there was a statute of limitation problem. Now that is not true of one case which I know we are going to talk about today, the *Fourco* case.

The CHAIRMAN. One of the problems with precedential cases, as you have been referring to them, is that by taking that approach that does not help thousands of other people who are in nonprecedential areas. I think you would agree with that.

Mr. RYAN. I certainly do, Senator.

The CHAIRMAN. Are you aware that of the 34 cases that encountered statute problems in 1981, 10 of these ran into those problems between late January and May 1981 when the Office of Enforcement's list was prepared.

Mr. RYAN. Senator, we could disagree on the numbers but as far as I am concerned, whether it is 2 or 10, it is still too high if there was an issue of the statute of limitation; however, that was not the determining factor in taking action on a case except for the *Fourco* case.

I would really like to stress a point because my answer will be the same to many, many of these questions. Because cases were referred to the Solicitor's Office for selection purposes rather than litigation purposes and because they did not have enough personnel to handle this, you found many cases on which no action had been taken. For instance, I was surprised when I saw that there would be a referral in 1979, but in early 1981 no action had been taken. I am sure that surprised you and I am sure it surprised your investigators.

The response I received when I discussed this matter with all the staff members, which I have done on at least three or four occasions since then, was that they were given certain cases. One or two they were told were high-priority litigation matters. Others they were given for review purposes to determine whether or not they should move into this high-priority litigation sector.

When they determined that they were not high-priority litigation matters, they put them on the side of the desk rather than closing them. Now as I understand it, the reason they did not close the cases is that, as you said, they were trying to develop precedent. They felt that if they could come up with decent precedent, a good decision in a case or a good settlement in a case, they could utilize

that settlement or that decision to move the potential defendants in the other cases into line on a voluntary compliance basis.

The CHAIRMAN. Of the 163 cases closed out by the Solicitor's Office without litigation in 1981, how many had been received by your office during 1981; how many of that 163?

Mr. RYAN. I would have to supply that for the record, Senator. I do not know. [Supplied for the record: That number is 19].

The CHAIRMAN. It is my understanding it is about 15 but if you would supply that for the record, I think it would be—

Mr. RYAN. I would like to comment on one aspect of this, though, and I think it quite frankly is to the credit of not only Mr. Clayton but Mr. Lebowitz, who is all the way over to the right, who has been running the enforcement program at least since I have been in the Department. I think there was an awareness on the part of Mr. Lebowitz and certainly Mr. Clayton that sending the Solicitor's Office hundreds of cases per year, when they could not possibly be litigated given the number of personnel they had, was not the best use of their time. Mr. Lebowitz and Mr. Clayton have made some very tough decisions on what should be referred to the Solicitor's Office and what should not, and I applaud them for that.

The CHAIRMAN. It is my understanding they only sent 15 in 1981. Am I wrong about that?

Mr. CLAYTON. Our figures indicate the number is 30.

The CHAIRMAN. Thirty?

Mr. RYAN. I have the exact numbers, Senator—

The CHAIRMAN. It is 30?

Mr. RYAN [continuing]. If you would like me to go through the referrals?

The CHAIRMAN. No, that is OK. As a matter of fact, a substantial number of these cases had been referred by the Office of Enforcement to the Solicitor's Office in 1978-79, of the 163. Am I wrong on that?

Mr. RYAN. I believe you are correct that many of the cases were referred through the entire period of 1978, 1979, and 1980. For instance, in 1978, 1979, and 1980 there were in excess of 150 cases referred each year.

The CHAIRMAN. I see. Yes, I think we had 7 in 1978 and since 1978, 46 in 1979 and then the rest since that date. Our review found that the Office of Enforcement recommended litigation, usually to recover funds, with respect to some 32 of these cases. Does that fit with your list, Mr. Ryan?

Mr. RYAN. I believe it is close to that, Senator.

The CHAIRMAN. OK. That recommendation was rejected in each of those cases. Is that correct?

Mr. RYAN. No, Senator. I believe we went forward with 15 cases.

The CHAIRMAN. However, these are new cases.

Mr. RYAN. Excuse me?

The CHAIRMAN. These are new cases. I am talking about the 32 prior cases. You went forward with 15 new ones and you approved 13 others for litigation but nobody has yet filed any of these cases. Is that correct?

Mr. RYAN. Of the 15 that we filed, Senator?

The CHAIRMAN. Well, the 13 that you have approved.

Mr. RYAN. No, I believe since you received those numbers we may have filed three or four of those cases just in the last couple of weeks.

The CHAIRMAN. All right. Our numbers are that out of 60 recommendations by the Office of Enforcement for litigation, it is our understanding they closed out 32 administratively where litigation had been recommended. Is that correct?

Mr. RYAN. I think that may be correct, Senator. If I can address the question, and Mr. Clayton or Mr. Lebowitz may want to join in on this—

The CHAIRMAN. Yes, we would be happy to have you join in but that is our understanding, that 32 of them, litigation had been recommended but they were closed out.

Mr. RYAN. Closed out in that some of the cases were most likely referred back to the program for voluntary compliance. Some we told the program people that we did not think there was a violation of the statute. With others, there was some type of settlement worked out with the defendants. That is correct with most of the cases, the 160-some we are talking about.

The CHAIRMAN. When was the May 1981 backlog list brought to your attention, Mr. Ryan?

Mr. RYAN. The first time any backlog was brought to my attention was when Mr. Dotson and Mr. St. Cyr, who were also new to the administration and to this program, brought that to my attention. I believe maybe Alan Lebowitz could tell you when the program people brought it to their attention and they brought it to mine.

The CHAIRMAN. When was that? About July of last year?

Mr. RYAN. It was in July or August when we—

The CHAIRMAN. Therefore, it was in the middle of summer or August 1981.

Mr. RYAN. Yes, sir.

The CHAIRMAN. When they did bring these to your attention, what did you do?

Mr. RYAN. I met with them, discussed the document which they had provided, asked our people—that is the Solicitor's people—who work in this area to provide—

The CHAIRMAN. Who were they?

Mr. RYAN. Monica Gallagher, her counsel for litigation, Mr. Goldberg, and her deputy, Mr. Eccles, to provide me with a detailed memorandum of every single document which had been discussed in Mr. St. Cyr's memorandum.

The CHAIRMAN. Now Ms. Gallagher was in charge of this area, then?

Mr. RYAN. She was the Associate Solicitor for the pension program, yes, sir.

The CHAIRMAN. What did you tell her or instruct her to do about this problem?

Mr. RYAN. First I instructed her to give me a detailed response to each one of the items mentioned in Mr. St. Cyr's memorandum.

The CHAIRMAN. Did you order her to take immediate action on these matters?

Mr. RYAN. I did after we received the list.

The CHAIRMAN. After you got the list.

Mr. RYAN. Senator, by the way, the list which we have provided to the committee is very similar if not exactly the same on many of the items as the list which the Solicitor's Office provided to me.

The CHAIRMAN. OK. Is it correct to say, then, that after holding these cases Ms. Gallagher then responded by sending them to the Office of Enforcement so that they would initiate voluntary compliance?

Mr. RYAN. It is my understanding, Senator, that of the cases that were closed, most of the action taken during 1981 was action that was planned prior to Mr. St. Cyr's memorandum and prior to my interest or your interest, quite frankly, in this whole area. As I understand it, over the last 3 years the division of the Solicitor's Office that handles the pension programs has been really overloaded with so many cases that at times I am sure they did not know which case to go forward with and which one not to.

As you have noted, during 1981 the number of cases referred to them dropped off substantially. One of the reasons that happened, according to Mr. St. Cyr and Mr. Dotson—and that is one of the reasons we had this meeting—was that the Solicitor's Office did not have the people to handle the referrals, so the Enforcement Division—that is, Mr. Lebowitz' area—decided to be a little bit more selective on the cases referred. That gave the pension section of the Solicitor's Office time to go through all of the pending cases and to move forward aggressively on closing out matters where they had already made decisions not to go forward with litigation.

The CHAIRMAN. I think what is important here is that it is our understanding that 34 cases were in danger of statute of limitations problems at that time, according to your own list. I have to say that there is a strong appearance that many of these cases were lateraled off to the Enforcement Office at the last minute. It appears the reason they did that was so the Department would not have to admit that the statute of limitations had expired on some of them.

Some of them are strong cases; in fact, some appear to be very strong, as we will discuss later. However, OE—the Office of Enforcement—recommended litigating 32 of these cases. Do you think that the Office of Enforcement makes those recommendations frivolously?

Mr. RYAN. No. In fact, that is one of the reasons why I have changed the policy that when Mr. Clayton or Mr. Lebowitz provides us with a case which they suggest is litigation-worthy, then we ought to have a very good reason why we do not go forward with that litigation.

Senator, it is difficult for me to respond to your 34 cases. We were aware that you were going to ask that question but I have had a difficult time identifying which 34 cases you are talking about. If your staff would provide us with the list of the 34 cases, I would be glad to provide you with a detailed response on each one of the cases.

The CHAIRMAN. Well, we will sit down and go over it with you on each one of those cases.

Mr. RYAN. OK.

The CHAIRMAN. What bothers me is that each of these cases should have been studied exhaustively with regard to the statute of

limitations. Yet the statute of limitations was about to run its course and the cases were suddenly referred to the Office of Enforcement for voluntary compliance. This is one of the things that is bothering us because we believe the statute did run on a number of them.

Let me ask you this: Were there any—

Mr. RYAN. Senator, may I respond to that?

The CHAIRMAN. Sure.

Mr. RYAN. I have closely analyzed this and I have determined that there are only two cases, and possibly two or three others which I am now looking at very closely, where the statute of limitations ran before any action was taken. Certainly—and I think this is a reason why we moved forward on cleaning out the backlog—certainly there were matters that have been sitting in the Solicitor's Office because a decision had been made not to go forward in litigation some time in 1979 or 1980 and they were not closed out until 1981.

The CHAIRMAN. I think what we are saying is that there were some whose statutes ran; the others were closed out without any action even though the Office of Enforcement recommended litigation in all of those cases.

Mr. RYAN. I really do not have knowledge of that and I will be glad to sit down with your people if they can tell me that.

The CHAIRMAN. Well, this is list No. 1. Do you have a copy of this list on the Philadelphia region cases?

Mr. RYAN. This is Mr. St. Cyr's list?

The CHAIRMAN. Yes.

Mr. RYAN. I do not have a copy of that with me, Senator.

The CHAIRMAN. Well, let me just go through a couple of them. No. 1 is the Fourco Glass Co. pension plan for United Glass & Ceramic Workers. The date it was referred to the Solicitor of Labor was May 15, 1979. OE recommended action was to issue a demand letter, and the date the statute expired in the last 6 months was March 11, 1981.

Turn to page 3, Gilbert Clinic, Inc., Employees Profit Sharing and Thrift Plan, was referred to the office that you now hold on February 12, 1980. OE recommended action was not applicable and the date the statute expired was March 17, 1981. This date was 3 years from the time the matter was brought to the attention of the AO by attorneys representing certain participants.

On page 4, First Federal Savings and Loan Association, Alaska Mutual Savings Bank, referred to the Solicitor of Labor on February 26, 1981. OE made no recommendation. However, it was suggested that a waiver of the statute of limitations be considered in order to provide more time for review of the matter, and that DOL options be immediately considered. The date the statute expired was March 1, 1981.

Now the comments on this are "OE internal memo with copy to the Solicitor of Labor dated March 2, 1981 indicates that Eccles discussed possible action with either Monica or Norman on February 27, 1981 and that the decision to take no action was based on the limited amount of time available, no evidence of losses, and the IRS awareness of the prohibited transactions."

On page 11 in the upper right-hand corner, Savannah ILA Employer's Pension Plan, Savannah Maritime Association ILA Plan, and the Tampa Maritime Association Plan—let's go to the ILA Employer's Pension Plan. The date it was referred to the Solicitor of Labor was November 8, 1979. OE recommended action, that the Solicitor of Labor take action to restore \$256,211 to the plan because of underreporting of hours worked. The statute was to expire June 7, 1981. The date is 3 years after the date of indictment of 22 officers of the ILA on June 7, 1978, in the Southern District of Florida.

On the Maritime Association, the statute also expired June 7, 1981, and the June 7, 1978, date of indictment is clearly not an absolute date from which the statute would run in this and other ILA cases. The actual dates could be later or earlier depending on the particular violation. That is the comment.

Then the Tampa Maritime Association was referred to the Solicitor of Labor on November 9, 1979, and OE recommended that the Solicitor take action to prevent further loss to the plan. The statute was to expire November 16, 1981, or June 7, 1981. The date of November 16, 1981, is 3 years from the date complainant advised the Miami AO that contributions of an employer and local 1402 were not being made. Then the date of June 7, 1981, is 3 years from the date of indictment.

I mean, it goes on and on.

Mr. RYAN. Can I respond to each one of those?

The CHAIRMAN. If you would like, sure. Go ahead.

Mr. RYAN. I will take them in reverse order.

All of the ILA cases which involve the pension plans in Savannah, Tampa, Jacksonville, the South Atlantic ILA/GAI Fund. All of the ILA cases that we have reviewed indicate that there is essentially no statute-of-limitations problem because we are looking at a continuous violation.

The CHAIRMAN. Well, why are they closed out, then?

Mr. RYAN. They are not closed out, Senator. What has happened with this case is that all of the ILA cases where there were violations were referred to the Office of Enforcement for voluntary compliance. If voluntary compliance is not worked out which is acceptable to the Department, they will refer the ILA cases back to us. We feel the statute of limitations is not a problem at all in continuing violations, and we will bring suit.

The CHAIRMAN. What if the Office of Enforcement is right and all these statutes have run?

Mr. RYAN. I did not hear you.

The CHAIRMAN. What if the Office of Enforcement is right and all of these statutes of limitations have run?

Mr. RYAN. I think that they indicate in a footnote, Senator, on page 11, that some violations may be continuing, and therefore the statute is not a problem. That is a footnote.

The CHAIRMAN. Yes, but they definitely state that the statutes run on the dates listed, right on the report to you. I have only listed a few of them. There are a number of ILA cases right in a row here. Then there is the Florida Ports GAI Fund, the Austin Co. Inc., Profit Sharing Plan, the ILA again in Florida Ports, the North Carolina Ports, U.F. & C.W. Union and Employers Health and Wel-

fare Trust Fund of Florida. These all expired last year, according to the Office of Enforcement.

The Chicago Truck Drivers Pension and Welfare Funds, the Qualified Real Estate Funds, United Castings, Inc. Defined Benefit plan, the Riggers L.U. 575 Vacation and Holiday Fund, the Riggers Trust Fund where litigation again is recommended. In fact, in a lot of these, litigation is recommended right off the bat rather than voluntary compliance.

The Feilen Meats Co. ESOP. They did recommend voluntary compliance there. The Dillard Department Stores, voluntary compliance was recommended. The Meatcutters & Butcher Workmen, the Gilbert Clinic, all of these are 1981, some of which are recommended for litigation and some for voluntary compliance. It seems to us that this may be a problem.

Let me go on to another line, then.

Mr. RYAN. Can I finish, just a response to each one of these?

The CHAIRMAN. Sure.

Mr. RYAN. In the ILA, we have looked pretty closely at those and I feel that with the ILA cases, that there is not a statute-of-limitations problem.

The CHAIRMAN. You feel you still have a chance of going after those through litigation?

Mr. RYAN. Without a doubt. Without a doubt.

The CHAIRMAN. Well, OE doubts it.

Mr. RYAN. Excuse me?

The CHAIRMAN. Your Office of Enforcement doubts it.

Mr. RYAN. The Office of Enforcement is the program area where we have investigators.

The CHAIRMAN. Yes.

Mr. RYAN. As you well know—you have investigators working for you—every time an investigator, an individual investigator goes out and works on a case, they spend a lot of time with it and they feel that they have a good, solid case. When they submit that to the reviewing authority, they sometimes do not agree with the determination.

That is true also with lawyers, as you well know, whether it is at the Department of Labor or at the Department of Justice. We have to have some prosecutorial discretion, and every time a case is given to us we cannot just immediately say that yes, we feel there is a violation.

What I have been trying to do, Senator—and I hope you agree with this, I think you do—we are trying to give much more credence to what the enforcement people say. When they have gone out and have spent their time and their energy to develop a case, they feel that it is litigation-worthy. Then we want to move forward on it.

Many of the cases you are talking about here, Senator, were in the Solicitor's Office for some time. They had been sitting there 2 years and many were sent to the Solicitor's Office as litigation-worthy but they fell in that category that I have talked about like all the ILA cases which deal basically with the same question. The decision was made not to go forward with many of the ILA cases.

The CHAIRMAN. Well, I compliment you for making these changes. I am not finding fault with you, I am finding fault with what has gone on here.

Mr. RYAN. Can I get to——

The CHAIRMAN. Let me just say this.

Mr. RYAN. Sure.

The CHAIRMAN. Let's assume for the sake of our discussion here today that you are right, that the statutes of limitations, as OE has said here, have not expired on all of these. However, OE says they have. Now all I can say is, I hope you are right.

Mr. RYAN. Well, I agree with them on some of them. That is the one I wanted to get to.

The CHAIRMAN. Well, why don't we go to those. Let me ask you this——

Mr. RYAN. The first one off the bat, in Philadelphia, Fourco Glass Co., which just for the record involves a purchase by a bank which was managing the pension fund of Fourco Glass' stock. The enforcement people felt that that was a violation of the fiduciary provisions of ERISA. It was referred to the Solicitor's Office some time in 1979, I believe.

The matter, I have since learned, was reviewed by an attorney. Based on the record that he had, my judgment is that he did not review it competently at this time. All of the information was not in the record that should have been in it but he should have known that, and he should have asked the people out in the field.

The decision to go forward with that case was made. An attempt to settle the case was initiated. Lawyers for the bank that was the fiduciary in this case came in to the Department of Labor, told the lawyers that they did not have a case because the statute of limitations had run. When our lawyers took a very good look at that—this was late 1980, early 1981—the lawyers decided that the bank's attorneys were absolutely right and that the statute had run. The matter was closed out in March 1981. That is when the closing memorandum was done but they identified that it was a statute of limitations problem in late 1980, early 1981.

The CHAIRMAN. As I understand it, in addition to the *Fourco Glass* case, the *Charles F. Smith & Sons* case was also one where the statute was improperly——

Mr. RYAN. My understanding of the *Charles Smith* case is that the statute had run 4 or 5 months before it was even submitted to the Solicitor's Office.

The CHAIRMAN. Maybe I could ask Ms. Gallagher a couple of questions about this.

Ms. Gallagher, are you aware that a backlog of 53 cases referred to your office by the Office of Enforcement during 1978 and 1979 were still unacted upon by the time the Office of Enforcement list was prepared at Mr. Shepley's request in May of 1981? Are you aware of that?

Ms. GALLAGHER. I was aware that there were a great many cases pending in our office which appeared to be open. Some of those were actually open and unanalyzed, and in some, decisions had been made to close them but no paper had been generated. There certainly were cases from 1978. I was aware of that. I was not aware of the exact number.

The CHAIRMAN. Well, as a consequence of no action on 34 of these cases, the statute of limitations, according to the Office of Enforcement and others, was in danger of running out. I take it you did not have time to analyze them and prepare a complaint prior to the statute's running. Am I correct on that?

Ms. GALLAGHER. I do not think so, Senator. I think, as the Solicitor said, we have identified a couple of cases where, much to my embarrassment, the statute of limitations did run while they were pending in our office but it certainly was not 30 or anything like that number. However, I am fully committed to the proposition that one is way too many.

The CHAIRMAN. Sure. As the Associate Solicitor of Labor and as a former professor of law, you have excellent credentials. I am not here to make too much of a fuss about this, but it still is a serious problem. Just those two cases were, but there are more than that. I think, like you say, if just one of these cases is not handled right, there could be thousands of workers and millions of dollars left in limbo, and we have not even started on the Culinary Workers case yet. We are just trying to establish that there have been some things done here that have not been quite proper, or at least have been handled in a manner that would amount to legal malpractice in private practice.

I think you would agree with my statement, and I think your statement pretty well says this, that as an Associate Solicitor of Labor overseeing the Department's work in this particular area, that protecting assets is of primary importance.

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. Let me ask Messrs. Ryan, Clayton, and Young some questions on this issue. Do you fellows feel the same way, that on these particular cases where the statute was in fact allowed to lapse, some of them being serious cases—and we have only gone into two of them so far—that that is a serious problem?

Mr. RYAN. Senator, if I can comment, just so the record is clear on this, during your last hearing on the racketeering bill or Senator Nickles' hearing which you attended, Senators Nunn and Rudman appeared. There was a colloquy between you and Senator Nunn, I believe, on the Department of Labor's lack of policing its own problems.

The CHAIRMAN. Right.

Mr. RYAN. You mentioned that this was totally unacceptable to you. Senator Nunn mentioned that it was unacceptable to him.

One of the things that we have done since receiving the list that you have talked about is to go through in some depth every single case that was mentioned in that list, some 240 cases. I have almost completed an internal investigation on about 11 matters. Where we find that there is any question of impropriety, which I think there may be on a couple of cases, I am going to refer that to the IG. If the IG finds anything there that is questionable, then I will ask him to refer it to the Public Integrity Section of the Justice Department.

The CHAIRMAN. Let me ask Mr. Young this question. In addition to practicing law, you served as the assistant attorney general for the State of Virginia. Now Mr. Young, did you have a system for

tracking statute of limitations dates for these cases, or did you establish a system, or are you in the process of establishing one?

Mr. YOUNG. The attorney general of Virginia had such a system.

The CHAIRMAN. Therefore, in Virginia you established a system for tracking cases. How about in the Solicitor's Office? Do they have any system for tracking statute of limitations problems within the Solicitor's Office or is that being instituted now?

Mr. YOUNG. Senator, my involvement with the Solicitor's Office is limited to *Donovan v. Schmoutey*, the Culinary Workers case, and I do not feel that I am really in a position to tell the committee what the state of the—

The CHAIRMAN. All right, let's have Tim answer that. Are you setting up a system for tracking the statute? Of course, you have been saying you have been doing that. You have been getting these cases put together so you know exactly what is happening in this area.

Mr. RYAN. We do in all the programs. That is not to say that we had a system in place pre-Fourco, which is really the end of 1980, the beginning of 1981. The prior administration was there but they too were very concerned with this program. It was a major embarrassment internally. Since that time in the pension area there has been a system to track the statute of limitations. Both from the enforcement standpoint where they submit information, and they sent out a memorandum at that time telling people what new information was needed.

The CHAIRMAN. Who instituted that system?

Mr. RYAN. Not by me, I was not there at the time. I think it was Mr. Lanoff and I guess Mr. Lebowitz.

The CHAIRMAN. Is it working well now, do you think?

Mr. RYAN. I would like to say, "Yes, I am positive." In the Department of Labor there is more than the pension program. We have 30,000 cases. The answer to your question is that I hope it is. This is why I really applaud this committee for this type of oversight. We are looking in-depth at every one of the programs, and we have been, to see whether we have any problems. Whether it is 2 cases or 34 cases, that is unacceptable.

The CHAIRMAN. Let me ask you this, Ms. Gallagher. Why would it be necessary for somebody outside your office to have the list of cases on statute of limitations problems prepared? Why wasn't this work done through the years so these problems would not arise? As you say, if one case, just one case occurs, that is a serious problem, and we found a lot more than one.

Ms. GALLAGHER. The Fourco case brought vividly to our attention the fact that the statute of limitations might run on us. It was a catalyst to us to try to get some changes made.

The CHAIRMAN. However, were you aware of the dimension of the backlog of cases that you had and the problems that were coming forth at this time with regard to the statute of limitations, before Mr. Ryan even asked to have a list prepared of all these cases?

Ms. GALLAGHER. I think there is room for a considerable amount of disagreement about the statute of limitations running on a number of those cases. I am quite sure that the dimension of the

problem is not that large, although I totally agree that any problem is too big.

We should have a system in our office. We do not have a good enough system. We are going to have a better system.

The CHAIRMAN. Well, I want to focus for a moment on specific cases your office closed out in 1981. We will deal with these and others much more extensively in hearings to be held in the months ahead. First, let us take Teamsters Local 299. Do you recall that case?

Ms. GALLAGHER. Yes, sir.

The CHAIRMAN. According to the Office of Enforcement's May 1981 case list that we have, the statute on this case had run on July 22, 1979. However, the case file indicates your office officially closed it out on April 28, 1981. Could you explain that discrepancy?

Ms. GALLAGHER. Yes, sir, I will try to. That matter was referred to our office and returned to the program sometime in 1978. I believe it was referred first in 1977 and returned early in 1978 for further investigation. It came back to us in 1979 and, a reasonably short time thereafter, the staff attorney who was assigned to the case and the counsel for litigation had a quite full discussion of the problems of the case.

It was a case very much like the Florida task force cases in some respects, although in some respects less attractive for litigation. Because we had four attorneys assigned to the Florida task force cases at that time, and because of the undesirability of that case from certain points of view—this is 299—it was decided right then that litigation did not make any sense.

This was one of the cases that stayed open for a very long time, and in fact was ultimately reassigned because no closing memorandum had been written at the time that the attorney who made the first analysis left the Department of Labor.

The CHAIRMAN. Well, one of the problems with this case was that this was Jimmy Hoffa's own local union, and it was, in our opinion, a significant case. There have even been allegations of a kickback situation at this local as well. Am I right on all those points?

Ms. GALLAGHER. Those allegations were referred to the Department of Justice very shortly after we learned of them.

The CHAIRMAN. OK. Now, according to OE, it is conceivable that the statute ran out in 1979, as argued by the Office of Enforcement. The 1981 closing out of the case occurred almost 2 years after the statute of limitations had run. We have a lot of documents on this case, and will put backlog Document No. 3 in at this time, without objection.

[The material referred to follows:]

24 APR 1981

Backlog Document #3

MEMORANDUM FOR: ALAN LEBOWITZ
Acting Assistant Administrator
for Enforcement

FROM: NORMAN P. GOLDBERG
Counsel for Litigation
Plan Benefits Security Division

SUBJECT: Teamsters Local 299 Severance
Plan (Madison Heights, Michigan)

I. INTRODUCTION

This case involves numerous allegations of violations of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001 et seq., including recently surfaced evidence of a \$38,000 kickback. For the reasons set forth below, we recommend that no further action be taken by this Department regarding those violations of ERISA which do not relate to the kickback. With respect to the kickback, we have referred the matter to the Department of Justice for possible criminal prosecution; in addition, although we cannot justify instituting a civil action without additional evidence, if you think it appropriate in light of the fact that at least one of the individuals involved in the kickback continues to play a very active role with a number of employee benefit plans, you may wish to initiate a supplemental investigation regarding the kickback or alternatively a new investigation to identify ongoing violations.

II. BACKGROUND

The Teamsters Local 299 Severance Plan (the "Plan") is a collectively bargained plan which was established in 1970. The governing Plan document requires up to 49.9% of negotiated contributions to be used to purchase ordinary life insurance containing cash values for participants, with the remainder of the Plan assets to be placed in a side fund to be invested by the Plan trustees. The Plan was originally administered by Fringe Programs, Inc., an Ostrer controlled entity, and initially purchased individual whole life insurance policies from Manhattan Life. In July of 1973, Ostrer was apparently forced out of the picture, and Severance Plans, Inc. (SPI), which was wholly owned by Ronald Prebenda, became the Plan administrator. In that same month, the Plan began purchasing individual whole life insurance policies from Jackson Life Insurance Company for all participants.

In 1974, the Plan, apparently on the advice of Prebenda, purchased a hybrid individual-group whole life insurance policy (Policy No. GP-500) from National Retirement Insurance Company, (NR). Richard Mazur was a director of NR and was president and effectively owned Mid-American Associates, Inc. (MA), the agency which sold the GP-500 policy to the Plan. Mazur also became vice president of SPI in 1974 so that SPI would have an officer who was a licensed insurance agent and could, under state law, therefore legally receive commissions from NR. In 1974 and 1975, SPI and MA split 85% of the premiums paid by the Plan to NR. In October of 1975, MA replaced SPI as the Plan administrator. The Plan continued the NR insurance policy, and MA remained the Plan administrator until July of 1976, when the Plan was terminated. 1/

The Area Office has learned and subsequently informed this office that the state organized crime unit has uncovered evidence that Richard Mazur, through MA, paid a \$38,000 kickback to Prebenda in connection with GP-500. Approximately \$25,000 of this \$38,000 was paid after January 1, 1975. Prebenda initially indicated to the state organized crime unit that he would testify against Mazur, some of the Plan trustees and others regarding the alleged kickback and other allegedly illegal activities involving both this and other employee benefit plans. After state law enforcement officials expressed interest in prosecuting the case, however, Prebenda informed them that he would not cooperate. Although state law enforcement authorities have

1/ Although the bulk of the Plan's assets was distributed in 1976, the Plan trustees did not distribute an estimated \$20,000 to cover, among other things, attorneys' fees and expenses incurred in a New York lawsuit brought by the trustees against the first insurance carrier which sold the Plan individual whole life insurance policies. The Plan was recently awarded \$30,000 in damages in this case, and the Area Office has been informed that the Plan trustees intend to distribute all remaining Plan assets. Most, if not all, of the Plan trustees who began their service in 1976 still serve as trustees of the trust, and Mazur still administers the trust.

secured some independent evidence of the kickback, 2/ they have concluded that they do not have a sufficient basis for prosecution without additional evidence and testimony provided by Prebenda. This matter has been referred to the Department of Justice, and although they are considering possible criminal prosecution, they have also indicated that the case is not strong based upon the evidence available to date and the fact that Mazur and Prebenda have had longstanding and frequent disputes and that neither would be a very credible witness.

Mazur and MA presently provide administrative and insurance consulting services to some 300 to 400 employees benefit plans in the midwest. Although Prebenda is currently the attorney for a number of employee benefit plans in the midwest, it appears that he has taken a less active role with employee benefit plans than Mazur.

III. DISCUSSION

With respect to the violations alleged in the ROI, we concur in the investigative findings of apparent violations of ERISA, but we have serious reservations about litigating this case. The principal violation stems from the fact that after January 1, 1975, the Plan continued to fund its death benefits through whole life insurance, even though the slow rate of

2/ This independent evidence includes checks written on MA's account to Prebenda for "legal fees". State insurance officials are also searching their files for a written record of a conversation which Prebenda had with state insurance officials, during which Prebenda allegedly acknowledged that the \$38,000 was, in fact, a kickback rather than compensation for legal fees.

accumulation of cash values under this policy did not justify the inordinately high premiums. 3/ By comparing the whole life premiums paid by the Plan to premiums charged under group term life insurance policies which would have given the Plan substantially the same benefits, it appears that the Plan paid \$124,000 in excess premiums after January 1, 1975. We have already filed six law suits in the Southern District of Florida involving this same issue, and have found that litigation to be extremely complex and time consuming. Moreover, this case would be more difficult than the six cases we have already filed since, unlike the plans in those cases, the Plan purchased a hybrid policy which had some group insurance features and which therefore cost approximately 22% less than the premiums charged for a true, individual whole life policy. This case is further complicated by the fact that the Plan document itself requires the purchase of insurance contracts offering cash values, which are not available under the true, group term insurance which would otherwise have been the best life insurance for the Plan. It should also be noted that since the Plan was terminated in July of 1976, the Plan does not continue to fund benefits through the purchase of life insurance. Finally, the statute of limitations appears to bar litigation of most if not all the matters addressed in the ROI. 4/

3/ Under GP-500, there were no cash values the first year and cash values for only a few elderly participants in the second year. Moreover, while poor records make it impossible to determine the precise annual rate of turnover among Plan participants, most of whom are clerical workers, the Area Office estimates that this annual turnover rate is roughly 20-35%.

4/ In addition to a §404 violation resulting from the continued maintenance of the GP-500 policy, there appear to have been §406(b)(1) and (3) violations by SPI, Prehoda, MA and Mazur in light of the manner in which SPI apparently named Mazur as an officer just to be able to receive commissions and in light of the fact that commissions paid to SPI and MA were 85% of premiums paid.

IV. RECOMMENDATION

In light of the problems outlined above, we recommend that no further action be taken with respect to those issues discussed in the ROI. With respect to the alleged kickback, although we could not recommend filing a civil action based on the facts known to date, you may wish to undertake a supplemental investigation to determine if there is independent evidence of the kickback. 5/ Alternatively, you may wish to initiate a separate investigation to determine if there are current violations by the parties involved so as to justify enforcement action.

5/ The state insurance officials who spoke to Prebenda for example, might be able to relocate the written record of their conversation with Prebenda and might be able to give more details on precisely how the kickback scheme worked.

SOL:PDammann:jab:4/14/81:DAMMANN# 2, b-1

cc: Master file
Chron file
Norman
Monica
Lit.
Polly

The CHAIRMAN. It says that the statute of limitations appears to bar litigation of most, if not all, matters addressed in the report of investigation.

Ms. GALLAGHER. That was certainly true at the time the memorandum was written. I do not know that it was necessary as a justification of what happened, but it was certainly true.

The CHAIRMAN. Are you familiar with Labor Department attorneys Polly Dammann and Norman P. Goldberg?

Ms. GALLAGHER. Yes, I am, Senator.

The CHAIRMAN. In fact, they both work for you. Is that correct?

Ms. GALLAGHER. Yes.

The CHAIRMAN. Are you familiar with a memo that Ms. Dammann wrote Mr. Goldberg recommending that this case be dropped?

Ms. GALLAGHER. That would probably be the closing memorandum, and I am familiar with it, yes.

The CHAIRMAN. That would be backlog document No. 4, and we will put that into the record, without objection.

[The material referred to follows:]

Backlog Document #4

MEMORANDUM FOR: NORMAN P. GOLDBERG
Counsel for Litigation, PBS

FROM: GARY A. DANNON
Attorney, PBS

SUBJECT: Termination from 299
Marianne Ph. Madison Heights
Michigan

PBSD Case No. 18-31-220
PWSB Case No. 32-6762

I recommend that the PBSD Case file be
closed as per your April 24, 1981 memorandum
to Alan L. Brown, Acting Assistant Administrator,
PWSB, referring the matter back to PBS
for possible further investigation.

Approved: NG
DATE: 4/28/81

Ms. GALLAGHER. Excuse me, Senator. It is not the document I was thinking of. This is part of a system to control the docketing process, and it merely requires Mr. Goldberg's initials on a piece of paper to assure that the docket clerk does not close any files which have not, in fact, been disposed of. The real closing memorandum in this case is three or four pages long and it had the sentence that you just read to me about—

The CHAIRMAN. Would you provide us that real closing memorandum?

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. OK. Thank you.

What this one says, this handwritten memo which is not dated recommends that the file be closed out per Mr. Goldberg's April 24, 1981, memo to Alan Lebowitz, Acting Assistant Administrator for Enforcement. Mr. Goldberg initialed his approval of that action on April 28, 1981.

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. You are saying that did not officially close out the case on that date?

Ms. GALLAGHER. The April 24 memorandum that is referred to here is what I would call the closing memo. It is the memo that analyzes the issues and sets forth the thinking of the people involved.

The CHAIRMAN. However, Mr. Goldberg did conclude that the case should be dropped.

Ms. GALLAGHER. Yes, sir.

The CHAIRMAN. OK. If you read the body of that memo I was referring to, it reads almost like an indictment. It states there is a possible kickback, which is a criminal violation, and it enumerates multiple civil violations of ERISA. Were you aware of those alleged violations?

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. Let me see if they are serious. The Goldberg memo cited evidence of a \$38,000 kickback to the plan administrator, Ronald Prebenda. Is that correct?

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. You say you referred that to the Justice Department?

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. On a proper referral from the Department of Labor?

Ms. GALLAGHER. I think so.

The CHAIRMAN. OK. The file reveals that you did. But it appears that you did little more on that referral, other than to go through the motions; at least that is what the documents indicate. The Goldberg memo indicates that your referral was so sketchy that Justice was unable to pursue this matter successfully. Was it ever prosecuted?

Ms. GALLAGHER. I do not know, Senator. I do know that it was discussed between attorneys of our office and attorneys in the Criminal Division.

The CHAIRMAN. Well, it was not prosecuted. That is our understanding. There just was not enough information given.

Let's look at civil violations alleged by Mr. Goldberg. Violations cited in the memo involve sections 404, 406(b)(1), and 406(b)(2) of ERISA. Specifically, the following matters: One, purchase of whole life insurance with cash values that did not justify what Labor found to be inordinately high premiums. You are aware of that?

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. Two, placement of the insurance broker as an officer of the plan. Are you aware of that?

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. Three, commissions paid to the insurance broker on the plan were 85 percent of all premiums paid. Are you aware of that?

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. Do you not consider those serious violations of ERISA?

Ms. GALLAGHER. Absolutely.

The CHAIRMAN. Then why did you allow the statute to run and the 12 cases to be dropped?

Ms. GALLAGHER. We made the decision not to pursue the case before the statute of limitations ran. The other part of your question, why did we drop a case that had such serious—

The CHAIRMAN. Yes; why would you drop it? Why would you make a decision not to pursue it when you admit each one of those allegations is extremely serious?

Ms. GALLAGHER. The system, Senator, was to refer a lot of cases to us and to have us select the ones that seemed to present the best vehicles for developing the law, at least that was a very large factor—

The CHAIRMAN. Ms. Gallagher, it is one thing to develop the law. It is another thing to allow people who are sopping up union pension funds like this to get away with it. I agree with your desire to develop a good body of law on how ERISA should be interpreted. I can understand that as a lawyer, somebody who wants to see law defined and people able to understand it, and to see attorneys in future be able to understand how the law is defined. However, it seems to me that your major and first thrust—tell me if you disagree with this—ought to be to protect the beneficiaries of those ERISA funds.

Ms. GALLAGHER. Absolutely, Senator, but choices had to be made. We only had 20 lawyers. They were all committed to cases for their 12 hours—

The CHAIRMAN. Did you ask for more lawyers?

Ms. GALLAGHER. I did.

The CHAIRMAN. Did you say you could not handle this?

Ms. GALLAGHER. I sure did.

The CHAIRMAN. If somebody would come to me as the committee chairman and say, "We have to have more lawyers in this area to protect the workers' funds because they are getting ripped off because we cannot keep up with the volume of work, I would move heaven and earth to do it."

Now you have to tell me, Tim, if your increase of 25 percent will solve this problem or whether it will not. If it will not solve it, then I want somebody in here saying how much money they want, and we will get you the money or we will find some way of doing it be-

cause these are important areas. I think it is up to the Department of Labor to let us know if you cannot administer or do necessary work in these areas to protect these workers' pension funds.

You have to admit that certainly the way you handled that case was no protection to the workers in that particular fund. Wouldn't you admit that?

Ms. GALLAGHER. Senator, the plan had already terminated so it is hard to identify that body of workers but I agree that if we could have brought that case it would have been better than having to reflect on our resources as a large factor in the decision not to bring it.

The CHAIRMAN. Ms. Gallagher, let me make a point to you: I realize these positions are difficult to be in and you have a lot of workload. But we see a lot of cases brought to make the law that were not nearly as significant as this case and what really happened in this case. I have to admit I am a little outraged that we are so interested in making law that we forget about—at least in this case, protecting the workers themselves and the hard-earned dollars they had to put into these funds. This is after all the reason the ERISA bill was passed to begin with.

Let me turn to another case. Let's talk about the Fourco Glass case at Clarksburg, W. Va. In 1975 the administrative committee of Fourco's pension plan for the United Glass & Ceramic Workers and two related plans directed the plan trustee, Equibank of Pittsburgh, to purchase company stock totaling \$927,000. Shortly after the purchase, stock held by the plans was devalued to \$463,500 and subsequently revalued to \$600,000 in 1977. This was in less than 2 years.

The Labor Department's investigation revealed multiple violations of ERISA in that Equibank had; One, failed to take steps to determine the fair market value of the shares purchased from Fourco in 1975; Two, paid more than adequate consideration for these shares. Now are you familiar with those facts, Ms. Gallagher?

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. According to an October 20, 1980 memo to you from Mr. Norman P. Goldberg, total assets of these three plans at the time of the stock purchase were \$9,271,226. You are aware of that?

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. Mr. Goldberg observed that the purchase figure of \$927,000 was just short of the 10-percent limitation imposed by section 407(a) (2) of ERISA with respect to the amount of employer securities the plan is permitted to hold. I take it you are familiar with that?

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. Because the \$927,000 value of the stock was apparently pulled out of the air—at least it looks that way to me—so Fourco could slide under the 10-percent rule by about \$1,000, did that appear to you to be a potential fraud?

Ms. GALLAGHER. It appeared to us to represent a serious violation of ERISA.

The CHAIRMAN. OK. However, it did not appear to be a fraud, then, or a possible fraud?

Ms. GALLAGHER. I must confess that I personally have never thought about it in those terms.

The CHAIRMAN. OK. We will put into the record at this time backlog documents five, six, seven, and eight.

[The material referred to follows:]

Oct. 20, 1980

Baklog

Document
#5

MEMORANDUM FOR:

MONICA GALLAGHER
Associate Solicitor, PRSD

FROM:

NORMAN P. GOLDBERG
Counsel for Litigation
Plan Benefits Security Division

SUBJECT:

Marshall v. Equibank, N.A., (W.D. Pa.)

I recommend proceeding with litigation in the United States District Court for the Western District of Pennsylvania against Equibank, N.A. which is trustee for certain defined benefit pension plans sponsored by Fourco Glass Company, Inc., seeking restitution for losses caused to the plans. We also intend to name the plan sponsor as a necessary party to rescind a transaction prohibited by ERISA.

Background

Fourco Glass Company, Inc. (Fourco) is a closely-held corporation; substantially all of its stock is owned by a group of investors representing several families in the Clarkburg, West Virginia area. The company manufactures sheet glass and its principal office is located in Clarkburg. 1/

The plans, three in number, were established in 1956 2/ and are defined benefit pension plans. These single employer plans comprise a commingled trust, trustee and managed by Equibank, N.A. of Pittsburgh, Pennsylvania.

The Plans are administered by a committee composed of Charles Parks, John Manfelt, and Fred Cason, all employees of Fourco. Under the plan documents, the committee is authorized to give written instructions to the trustee concerning investment of plan assets.

- 1/ Fourco recently acquired the common stock of ASC Industries which is also a glass company. Fourco has been doing well financially ever since.
- 2/ The plans are: (1) Pension Plan for the United Glass and Ceramic Workers, (2) Retirement Income Plan for Salaried Employees, and (3) Pension Plan for Window Glass Cutters (hereinafter the Plans).

Facts

The violations here in question concern the 1975 sale of 9,270 shares of 7 1/2 preferred company stock by Fourco to the Plans, for \$100 per share or \$927,000. Shortly after the purchase, the stock held by the Plans was devalued by Equibank to \$463,500 and subsequently revalued to \$600,000 in 1977. The ostensible reason for the devaluation was to reflect the changing financial status of the company, although there is no information indicating any discernible change in the financial condition of the company from 1975.

The Plans administrative committee, which was comprised of persons different from those who presently serve, 4/ directed the trustee, Equibank, N.A., in writing, to appraise the stock and make the 1975 purchase. Fred Cason, presently an administrator of the Plan and Vice President of Finance for Fourco Glass, has told the DOL auditor that he, Cason, believes that no research, or financial analysis was made of the company by Equibank, the Plans or the company itself when the stock was valued and purchased for \$927,000. 5/

Consistent with Cason's conclusion, Tom Blechschmidt, Assistant Vice President Pension Trust Department, Equibank, N.A. until the end of 1978, stated that in 1975 no formula was used by the Trustee to establish the \$100 per share value placed on Fourco stock. 6/ This was confirmed by Equibank in a letter to the Department. Blechschmidt also stated that the subsequent valuations of the Fourco stock reflect the change in financial conditions of the company. These changes, however, are not evidenced by any company documents nor is it possible to ascertain from these documents how or on what basis the initial \$100 value was placed on the stock.

- 4/ According to the ROI the persons who, as administrator, initiated the purchase in 1975 are either dead or not locatable through the company.
- 5/ Total Plans assets at time of purchase of the stock were \$2,271,226. The purchase figure of \$927,000 is just short of the 10% limitation imposed by §407(a)(2) of ERISA with respect to the amount of employer securities that the plan is permitted to hold.
- 6/ Despite the devaluation, the fiduciaries have continued to hold the stock. On two occasions, September 12, 1979, and May 10, 1980, Equibank, as trustee of the Plans, has requested that Fourco re-purchase the Fourco stock from the Plans for \$100 a share, plus all dividends. Fourco has rejected each proposal.

ERISA Violations

(1) §404(a)

It appears clear in the instant case that Equibank, the trustee, violated §404(a)(1)(A) and (B) by: (1) failing to take steps to determine the fair market value of the shares purchased from Fourco in 1975; and (2) paying more than adequate consideration for those shares. There seems to be no dispute with respect to the first and third items based on the concessions previously made by the bank.

As to the allegation that the Plans paid too much, under §3(18), adequate consideration of an asset is defined as "the fair market value of the asset as determined in good faith by (the fiduciaries) pursuant to the terms of the plan." The Department has taken the position that the determination as to adequate consideration must be made on a case-by-case basis by plan fiduciaries, in light of all relevant facts and circumstances. Opinion Letter 76-88 (September 2, 1976). The Department has also taken the position that under §3(18), a fiduciary must make a "good faith" determination, with respect to the fair market value of the stock, utilizing recognized methods of valuing stock in closely-held corporations. Opinion Letter 76-16 (January 26, 1976). The IRS has issued regulations which set forth the factors which must be considered in valuing closely-held stock for estate and gift tax purposes, and we are prepared to assert that these or similar criteria of valuing stock likewise apply in the present context. The factors enumerated in the IRS regulations include: (1) the nature and history of the business; (2) economic outlook and condition of the industry; (3) book value of the stock and the financial condition of the business; (4) the earning capacity of the company; (5) dividend-paying capacity; (6) goodwill and other intangibles; (7) prior sales of the stock and the size of the block to be valued; and (8) the market price of similar stocks actively traded in the open market.

Under the obvious circumstances of this case and the above noted criteria, the trustee cannot be deemed to have made a good faith determination of the value of the Fourco stock. The value placed on the Fourco stock in 1975 appears to have been arbitrary, and the trustee is unable to produce any information that the value placed on the stock reflected fair market value. The subsequent revaluation less than a year later which reduced the value of the stock by one-half without any apparent change in the condition of the company tends to reinforce that conclusion. Consequently, we are prepared to argue that the Plans paid an amount for the Fourco stock substantially in excess of the amount which

they would have paid had the stock been properly valued.

(2)§406

Under §408(e) of ERISA, the prohibited transaction rules of §406 and §407 do not apply to the acquisition or sale by a plan of qualifying employer securities if, among other conditions, the transaction is for adequate consideration. Because the Fourco stock appears to have been sold for more than adequate consideration, the §408(e) exemption does not apply, and the sale constitutes a prohibited transaction. 7/

Conclusion

We intend to name Equibank and Fourco in the complaint, Equibank as the party liable for the imprudent conduct and Fourco as a necessary party. Because of the prohibited transaction, rescission appears to be a logical remedy which, together with interest, should restore the Plans to their rightful place. Equibank has, in effect, informally been pursuing rescission for some time and it seems likely that notification to the parties of the Department's intention to bring suit will operate as a catalyst to bring this relief about. Certain other injunctive relief will be required to resolve this suit, including an injunction against Equibank to prevent similar misconduct in the future.

7/ Section 407(a) prohibits holding of qualified employer securities. Due to the lack of information we cannot determine whether the 10% limitation, as imposed by §407(a)(2), has been violated.

OCT 21 1980

Bullog Document #6

MEMORANDUM FOR: THE SOLICITOR
THE ADMINISTRATOR

FROM: MONICA GALLAGHER
Associate Solicitor, PBSP

SUBJECT: Marshall v. Foubank, W.A.,
(W.D. Pa.)

We are proceeding with litigation in the above styled case alleging that the trustee (Foubank) failed to take steps to determine the fair market value of shares of Source stock purchased on behalf of the Plans. We also intend to allege that the trustee by failing to determine the fair market value of the shares caused the Plans to pay more than adequate consideration for the shares. The above described conduct constitutes violations of (404(a)(1)(A) and (f), and (406(a)(1)(A) and (f).

The suit, which will be filed in the United States District Court for the Western District of Pennsylvania, will name the sponsor of the plans (Source) as a necessary party to rescind a prohibited transaction and seek restitution by the trustee for losses caused to the plans.

A copy of a staff memorandum setting out the basis for litigation in detail and a copy of the notice letter are attached.



U.S. Department of Justice

#7

RJS:JLach:rsh
145-10-1307

4 DEC 1960

Washington, D.C. 20530

Telephone:
633-3495

Miss Carin A. Clauss
Solicitor
Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

Re: Ray Marshall v. Equibank, N.A.,
et al., U.S.D.C. W.D. Pa.

Dear Miss Clauss:

We have reviewed the proposed complaint prepared by your office for use in the above-captioned action arising under the Employee Retirement Income Security Act, 29 U.S.C. §1001, et seq., and deem it suitable for filing. This action falls within the category of cases for which the Department of Labor has primary litigating responsibility under the Memorandum of Understanding of February 11, 1975. We assume that all future proceedings in this action will be conducted by attorneys from your office and we are, therefore, closing our file in this matter.

Before filing the complaint, we request that your office contact the United States Attorney's office for the Western District of Pennsylvania in order to confirm that the complaint and signature block conforms with local rules of practice. We are forwarding a copy of the proposed complaint and attached papers to the United States Attorney's office for their information.

Please contact us if we can be of further assistance to you.

Very truly yours,

ALICE DANIEL
Assistant Attorney General
Civil Division

By:

DAVID J. ANDERSON
Director
Federal Programs Branch
Civil Division

HERMAN C. BIGGEL
 THOMAS E. JERKS
 RUDOLF PETERSON
 GUY A. GARDON
 GEORGE W. BEATTY
 HERBERT L. AWE
 RALPH L. PETERSBERGER
 MALCOLM D. MACARTHUR
 MATTHEW E. ADAMS
 MICHAEL MULRONEY
 PHILIP A. ROSENBLUM
 WILLIAM L. GOLDMAN
 DAVID A. HILDEBRANDT
 LARRY E. SHAPIRO
 JAMES H. BOYLE
 STEPHEN E. WELLS
 ROBERT E. CARNEY
 JAMES C. WARNER
 LINDA H. LARSEN
 WAYNE S. RAPLAN

LAW OFFICES
LEE, TOOMEY & KENT
 1900 EIGHTEENTH STREET, N. W.
 WASHINGTON, D. C. 20036
 TELEPHONE NO. (202) 788-0980
 CABLE ADDRESS "LEETAK"
 TELEPHONE NO. (202) 457-8600

COUNSEL
 JOSEPH G. BLANDI
 RALPH A. SILCHRIST
 ALFRED H. OSGOOD

ARTHUR H. KENT (888-1980)
 FREDERIC A. LEE (883-1988)
 FLOYD F. TOOMEY (884-1878)

WRITER'S DIRECT DIAL NUMBER
(202) 457-8518

February 17, 1981

#8

Norman Goldberg, Esquire
 U. S. Department of Labor
 Room C-4508
 200 Constitution Avenue, N. W.
 Washington, D. C.

Re: Fourco Statute of Limitations Waiver

Dear Norman:

Pursuant to our telephone conversation of Tuesday, February 17, enclosed is a copy of a draft statute of limitations waiver prepared by Greg Kerr on behalf of Equibank. The Company would be willing to sign such a waiver as well. My only suggestion is that the three Plans involved be specified by name in the first and last paragraphs.

As soon as we have heard from you, I am prepared to sign on behalf of the Company and understand Mr. Kerr will make arrangements to do likewise on behalf of the Bank.

Yours,

Carl A. Diliberto

cc: Mr. Greg Kerr

DRAFT - 2/1
W.G.Kerr

STATUTE OF LIMITATIONS WAIVER

On or about February 6, 1981, representatives of the U. S. Department of Labor, attorneys Norman P. Goldberg, Counsel for Litigation, Plan Benefits Security Division and Willie M. Alexander, indicated an intent to commence legal action against Equibank (the "Bank") as trustee and Fourco Glass Company, Inc. (the "Company"), as a necessary party, for alleged violations of various provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), arising out of the purchase by the Bank as trustee of preferred stock of the Company on April 11, 1975 (the "Subject Transaction").

The Bank and the Company deny that any provisions of the Act have been violated by either of them and have indicated their intention to defend vigorously any such legal action.

The parties have engaged in discussions which, if successful, would lead to the amicable settlement and adjustment of their differences. In order to allow time for further discussions, the Department of Labor has agreed to delay the commencement of any such action at least until after March 31, 1981, and the Bank and the Company have agreed to the following limited waiver of their statute of limitations defenses:

In consideration of the U. S. Department of Labor withholding legal action until after March 31, 1981, Equibank, trustee, and Fourco Glass Company, Inc. agree (solely with respect

to causes of action of the Department of Labor based upon the Subject Transaction, and solely applicable to an action or actions commenced by the Department of Labor after March 31, 1981 and on or before May 15, 1981), not to assert a statute of limitation defense under Section 413(a)(2)(B) of ERISA based upon the filing during February, 1978, of the annual returns of the ^{now equibank} Fourco Glass Company, Inc. Pension Plans on Form 5500 with respect to the Plan Year ending December 31, 1976. The ^{other} right to assert any and all defenses including, but not limited to, statute of limitation defenses under Section 413 of ERISA, except as above specifically described, is retained and not waived. This waiver shall expire and be ineffective and inoperative as to actions filed by the Department of Labor before April 1, 1981 or after May 15, 1981.

Dated this _____ day of _____, 1981.

Attorney for Equibank

Attorney for Fourco Glass Company, Inc.

The CHAIRMAN. If you did not consider it as fraud, it would surely be some indication that there might be some fraud involved there. I am not saying you have to conclude that it is fraud.

Ms. GALLAGHER. Possibly.

The CHAIRMAN. However, you are saying it is serious? That is the point.

Ms. GALLAGHER. It was a very serious problem. That is why we undertook to bring litigation.

The CHAIRMAN. Was this case ever referred to the Department of Justice for possible criminal violations?

Ms. GALLAGHER. I would have to look that up, Senator. Perhaps you are not aware but we now have a system by which every matter referred to the Solicitor's Office for consideration of litigation or for litigation is automatically referred to the Criminal Division of the Department of Justice at the same time. However, whether we received this case before or after that system was agreed to, I am not certain.

The CHAIRMAN. It is my understanding it was not referred, but I would like you to check that to see if it has been referred to the Department of Justice.

Back to the discussion of the civil litigation regarding this case: On October 21, 1980 you stated in a memorandum to the Solicitor that the Department of Labor was ready to proceed with litigation. Is that correct?

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. That is shown in backlog document No. 6.

On December 4, 1980 the Department of Justice informed the Solicitor of Labor that it had reviewed the proposed complaint and deemed this case suitable for civil litigation. Is that correct?

Ms. GALLAGHER. I am not certain but generally they notify us when they assign us primary litigative responsibility, so that would likely be that document.

The CHAIRMAN. OK. Our backlog document No. 7 does indicate that the answer would be yes.

Now I have here the February 17, 1981 draft of an agreement, never executed, entitled "Statute of Limitations Waiver." Is it correct to assume that if the parties involved—Equibank, Fourco Glass, and the Department of Labor—had executed this waiver, Equibank and Fourco would have waived their statute of limitations defense if the Department would hold off for a while, allowing them to expedite repurchase of company stock at a lower price, settling the biggest complaint of the intended suit?

Ms. GALLAGHER. No, Senator. Unfortunately, that is the problem. They were not waiving what they were relying on. They were tendering us a waiver of a statute only from a date forward when it had already run.

The CHAIRMAN. Is it logical to assume that if such a waiver was being considered in early February 1981, the statute of limitations had not yet run at this point?

Ms. GALLAGHER. Unfortunately, that is not the way it happened. They were offering to waive the portion of the statute that was not going to help us.

The CHAIRMAN. According to the Office of Enforcement's case list it ran on March 11, 1981 but you are saying that may be wrong.

Ms. GALLAGHER. That is right, Senator.

The CHAIRMAN. OK.

Ms. GALLAGHER. That is what they thought; that is what my attorney thought. That is how we got into this terrible embarrassment.

The CHAIRMAN. I see. Now I understand that a problem developed on February 18, 1981 relative to Equibank's and Fourco's needing the Economic Development Administration to waive certain loan restrictions in order to allow Equibank and Fourco to accomplish repurchase of the stock. What was this all about?

Ms. GALLAGHER. After we recognized that the statute of limitations had run, we discussed it immediately with the PWBP administrator. Everybody in the Department decided that we would go forward and see whether the parties could reach some settlement despite the fact that the statute had run because that would be in the interest of the plan. The bank had made it very clear that the only kind of settlement they were interested in was the company, Fourco, coming up with the money.

The company was in a situation where, because EDA had guaranteed some of its borrowings, it could not come up with any additional money without permission of the EDA. It was prohibited by its commitments. Therefore—I believe at the request of Fourco but I am not certain how this came about—we went over to meet with EDA to present an explanation of the ERISA violations and to learn whether or not they would exercise their discretion in favor of permitting Fourco to repay the plan.

The CHAIRMAN. They were reluctant to agree because they thought they might lose their \$18 million they had lent Fourco.

Ms. GALLAGHER. Exactly. They told us that they would not agree.

The CHAIRMAN. On the very next day, February 19, 1981, did you and Mr. Ian Lanoff, administrator of the pension and welfare benefit program, and members of your staff meet to discuss whether the Department should continue this litigation in view of problems with EDA?

Ms. GALLAGHER. I am sure we met to discuss the situation.

The CHAIRMAN. We have a memo on that meeting by Mr. Willie M. Alexander of your staff, which tells who was present and explains how the workout by Equibank and Fourco would be impossible because of EDA's position. This left the Department one alternative, and that was to bring suit. Now are you familiar with that memo?

Ms. GALLAGHER. I am sure I am. Yes, Senator.

The CHAIRMAN. We will call that backlog document No. 10, and put all the first 10 documents into the record, without objection.

[The material referred to follows:]

U.S. DEPARTMENT OF LABOR
Office of the Solicitor
WASHINGTON, D.C. 20210



9
● MAR 1981

MEMORANDUM FOR: FILE

FROM: WILLIE M. ALEXANDER *WA*

SUBJECT: February 18, 1981, Meeting with the
Office of Economic Development Admini-
stration ("EDA"), concerning Fourco
Glass Company, Inc.

In attendance at the meeting on behalf of the Department (PBSD) were attorneys Norman P. Goldberg, Counsel for Litigation, PBSD and Willie M. Alexander, and of EDA, Messrs. Miles Sullivan, Walter McCullen, and Mrs. Campbell, assistant to Mr. Sullivan.

Purpose of Meeting

To advise EDA generally of our proposed litigation and to examine whether, to facilitate settlement, EDA would be willing to waive certain loan restrictions placed on Fourco, so as to allow the company to repurchase the 1975 block of shares in question sold to the plans.

Discussion

We were informed that EDA basically functions as a money lender and loan guarantor of last resort for companies that are unable to secure funds from the private sector, because of poor company performance.

Consistent with this function, we were informed that EDA made a \$7 million direct loan to Fourco and pledged a 90% guarantee of \$11 million worth of loans to Fourco from participating banks.

We informed EDA that the Department of Labor, Equibank and Fourco have been meeting in an attempt to remedy the alleged wrongful stock purchase (EDA was already aware of the circumstance giving rise to the Department's case). We explained to them that Fourco and Equibank had basically agreed that Fourco would repurchase the stock with interest included over a period of three years and that Equibank would guarantee the repurchase.

Accordingly, we asked EDA whether it could waive any of the loan restrictions placed on Fourco, to allow it to repurchase the stock from the plan with interest (\$1.3 million). EDA stated that it was extremely reluctant to agree to a waiver, because any such capital outlay by the company could precipitate its bankruptcy and cause EDA to lose some \$18 million.

EDA also informed us that neither Fourco nor Equibank, who they believe bears primary responsibility for the transaction, has made any concessions to EDA in exchange for the requested waiver.

As an aside, EDA informed us that the 1975 purchase of Fourco stock was primarily initiated by Equibank to secure EDA guarantees of loans made to Fourco. The request was precipitated because Equibank made a loan commitment to Fourco for \$14 million and later learned that the loan was in excess of the federal loan limitations laws. Accordingly, they approached EDA to secure guarantees for the excess as well as the remaining part of the loan. EDA said that it would only make the guarantees if Fourco could show \$1.3 million in equity. Fourco at that time had little, if any, equity, but nevertheless requested the then trustee Bankers Life, to cause the company plans to purchase company stock in order to increase company equity and to obtain the guarantees for Equibank. The trustee refused and Fourco immediately retained Equibank as the trustee for the plans, and directed Equibank to cause the plans to purchase 9,270 company shares at \$100 par, which it did. Needless to say Equibank secured the loan guarantee it needed, Fourco received the loan and equity it needed, and the plans received the company stock.

U.S. DEPARTMENT OF LABOR
Office of the Solicitor
WASHINGTON, D.C. 20210



10 MAR 1981

#10

MEMORANDUM FOR: FILE

FROM: WILLIE M. ALEXANDER

SUBJECT: February 19, 1981 meeting concerning
Ray Marshall v. Equibank & Fourco
Glass Company

On February 19, 1981, Monica Gallagher, Robert Eccles, Robert Gallagher, Norman Goldberg, and Willie Alexander met with Ian Lanoff, Program Administrator, to discuss whether the staff should pursue the proposed litigation in the above referenced matter.

At the meeting we informed Mr. Lanoff that the staff met with EDA on February 18, 1981, to discuss whether EDA would be willing to waive certain loan restrictions placed on Fourco, so as to allow the company to repurchase the 1975 block of shares in question sold to the plans. EDA stated that it was extremely reluctant to agree to a waiver of the loan restrictions, because any such capital outlay by the company could precipitate its bankruptcy and cause EDA to lose some \$18 million.

In view of the EDA's position, we informed Mr. Lanoff that an effective settlement of this matter appears remote, and that left the Department with the alternative of bringing suit against Equibank and Fourco. However, we explained to Mr. Lanoff that there are serious statute of limitations problems presented in this matter, and that we were concerned that, if we lost the case on that issue, it would establish a potentially bad precedent that would adversely affect other cases as well.

After lengthy discussion of the above, it was agreed that the Department ought not pursue litigation against Equibank and Fourco.

The CHAIRMAN. Now the consensus of this meeting was that the Department ought to pursue litigation against Equibank and Fourco because of statute of limitations problems. Is that correct?

Ms. GALLAGHER. That the Department could not pursue that litigation, yes, Senator.

The CHAIRMAN. Right on the memorandum from Willie M. Alexander, dated March 19, 1981, subject, February 19, 1981 meeting concerning *Ray Marshall v. Equibank and Fourco Glass Company*, the last paragraph: "After lengthy discussion of the above, it was agreed that the Department ought not pursue litigation against Equibank and Fourco." That is what it is.

Now as I understand it, the case was then closed without litigation on April 1, 1981. That is correct?

Ms. GALLAGHER. Yes, Senator, that is right.

The CHAIRMAN. Therefore, to restate the sequence of events, we have the Department's decision in October 1980 to file civil litigation; the Justice Department's clearing the way for the litigation in December 1980; the Labor Department's consideration on February 1981 of allowing the parties involved to sign a waiver of their statute of limitations defenses and thus settle the case out of court if they could. Are we OK up to there? Am I stating it correctly up to there?

Ms. GALLAGHER. I did not hear what went with the Labor Department's—was it consideration of the waiver?

The CHAIRMAN. Yes, the Labor Department's consideration in February 1981—according to this memorandum—of allowing the parties involved to sign a waiver of their statute of limitation defenses and thus settle the case out of court.

Ms. GALLAGHER. So far, absolutely correct.

The CHAIRMAN. OK. The dropping of the case by the Department on April 1, 1981 because the EDA chose not to jeopardize its loan funds, is that correct?

Ms. GALLAGHER. I would say that is not exactly correct. The Department dropped the case because in our opinion there was no chance of prevailing against the statute of limitations defense which had been presented to us.

The CHAIRMAN. Well, you are not blaming EDA for preventing the settlement, are you?

Ms. GALLAGHER. Absolutely not, Senator.

The CHAIRMAN. I think this leads, then, to what should be a pretty obvious question: Why did your office wait until the last minute and then drop the case?

Ms. GALLAGHER. I think this was a very bad example of how things can go wrong, Senator. We were overloaded. We did not get to this early enough. When we got to it, we misanalyzed it. Nobody recognized it until we were confronted with it by defense counsel, and we had to acknowledge at that time that the statute had indeed run on the claims that we were prepared to assert.

The CHAIRMAN. Well, I want to compliment you for admitting that because it is not easy to do. It was a serious problem. I want to compliment you, Mr. Ryan, for admitting as well, that it is a serious problem that you hope will never happen again down at the Department of Labor. It just is not fair to those people who, like you say, rely on the Government to do a better job.

Now Mr. Ryan, you said earlier in your testimony that there are two cases where there are serious allegations of impropriety in the way Labor handled them. You also said that they are being investigated now. Could you elaborate on those two cases? Was Fourco one of them?

Mr. RYAN. Yes, Senator.

The CHAIRMAN. OK. What was the other case?

Mr. RYAN. The other case where we feel there may be an actual statute of limitations problem is with a Teamsters Local; 945, I believe. It is in northern New Jersey.

The CHAIRMAN. This is the first that we have heard of this one. Would you give us information pertaining to that one as well?

Mr. RYAN. I will be glad to. Senator, as I said, there are about 11 cases, I believe, where what I have done is, I have asked every person who has had any involvement, whether they are now with the Government or outside of the Government, to provide us with a memorandum. For instance, in local 299 the chief lawyer who was handling that case is now an assistant U.S. attorney in Seattle. He has supplied me with information. We have a number of individuals who are in private practice now and from whom we have requested information. When they said that they would not comply, we told them that there would be another method of receiving a memorandum of their understanding of the case. As soon as we have completed our own review within the Department, I would be very happy to come up and sit down and go through the whole thing with you.

The CHAIRMAN. Who was responsible for this case, as well?

Mr. RYAN. Excuse me?

The CHAIRMAN. Who was responsible for the supervision of this case, as well?

Mr. RYAN. Of Fourco or of 945?

The CHAIRMAN. Nine forty-five.

Mr. RYAN. The supervision follows the same line in this case as it did in the other, from Monica Gallagher to Norman Goldberg and down to a line attorney.

The CHAIRMAN. OK. Let me turn to the Ohio Carpenters Health and Welfare Plan case. This is where trustees of the plan stand accused of taking the contribution from employers and keeping short-term interest prior to distribution of contributions to various funds of the plan. They were able to do this because they served in the dual role of trustees to the plan and to a central collection agency set up by themselves that collects contributions from employers. Are you familiar with this case, Ms. Gallagher?

Ms. GALLAGHER. Yes, Senator, I am.

The CHAIRMAN. On July 11, 1980 a memo was sent to you by the Office of Enforcement insisting that a demand letter be issued to the plan trustees to remove themselves from the CCA trusteeship and to return to the fund all earned income from plan assets. Do you recall that memo?

Ms. GALLAGHER. Yes, Senator.

The CHAIRMAN. That would be backlog document No. 12, and we will put that in the record at this point, without objection.

[The material referred to follows:]

Backlog Document #1312

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216

Reply to the Attention of: LBE

**MEMORANDUM**

MEMORANDUM FOR: Ms. Monica Gallagher
Associate Solicitor

FROM: Mervyn A. Schwedt *MAS*
Acting Assistant Administrator
for Enforcement

SUBJECT: Ohio Carpenters
Health and Welfare Plan
Case No. 53-1248

Transmitted herewith are copies of an Action ROI, dated May 7, 1980, and accompanying memoranda from the Cleveland Area and Chicago Regional Offices, pertaining to the above plan.

The investigation has been reported to the Administrator as a significant case and concerns a "non-profit," union controlled entity that collects, records, deposits, and disburses monies forwarded to it by employers and local unions pursuant to the terms of Collective Bargaining Agreements negotiated by local unions and district councils affiliated with the United Brotherhood of Carpenters and Joiners of America and the Ohio State Council of Carpenters.

The Carpenters Central Collection and Administrative Agency (CCA) was incorporated as a non-profit corporation under the laws of the State of Ohio on May 24, 1978. ^{1/} In August 1978, the firm commenced operations for the above health and welfare plan. The governing members of CCA consists of a Board of Trustees who are appointed by the participating local unions and district councils. At this time, five individuals, all of whom are executive officers of their union organization, are trustees of CCA. These same individuals are also Union Trustees of referenced health and welfare fund.

^{1/} CCA does not have federal tax exempt status, but officials of CCA believe they can obtain such status. (See Exhibit 13, page 3.)

The investigation reveals that CCA receives funds on behalf of several entities which are not employee benefit plans. 2/ Also, CCA collects employers' contributions relating to the Carpenters Pension Plan, Apprenticeship Fund, Supplemental Unemployment Benefit Plan, Vacation Fund, etc. All of the monies paid into CCA are co-mingled in a trust account, invested in short-term obligations, and subsequently, disbursed to the appropriate organization. The interest earned on short-term investments is retained by CCA. In connection therewith, information was obtained revealing that the health and welfare plan entered into an agreement with CCA to allow the firm to collect all payments and contributions required by the participating employers under the bargaining contract. To defray costs of collecting, administering, and disbursing the funds due under the Bargaining Agreement, CCA was authorized to retain and apply to its costs such interest and collection penalties which might be earned in transactions with financial institutions or delinquent employers. It is interesting to note that the agreement between the Plan and CCA was signed on behalf of the plan by the Chairman of the Board of Trustees - Milan Marsh, who is also a trustee of CCA, Executive Secretary/Treasurer of the Ohio State Council of Carpenters, President of the Ohio AFL-CIO, President of the United Counties Carpenters District Council and trustee of the Ohio Carpenters Pension Fund.

Financial records examined by the Area Office disclosed the following information relating to total funds received and collected by CCA on behalf of all the entities it services, income from interest and penalties and the amounts distributed to the health and welfare fund. 3/

	Total Receipts	Interest Income	Collection Penalties	Dist. to H & W Plan
8/29/78 - 7/31/79	\$58,580,582	\$224,863	\$32,798	\$6,190,989
8/1/ - 12/31/79	\$14,437,848	\$195,211	3/	\$3,671,099

2/ Monies are collected by CCA for such organizations as the United Counties Carpenters Charity Fund, Laborers Relations Division, United Appeal, District 2 Dues, Heavy Highway Fund, etc. (see Exhibit 24).

3/ See Exhibit 26, workpaper page 3, and Exhibit 27 for source of the listed information. No figures are available regarding penalties collected and retained by CCA for the period 8/1/ - 12/31/79.

Because of the lack of detailed cost and expense data, an accurate net profit figure could not be computed. An independent CPA firm, hired by CCA, has recently completed an audit of the firm's business activities. 4/ The Area Office is making arrangements to obtain a copy of this audit.

Partial accounting information obtained by the Area Office from the Plan's independent auditors indicates that during the first eleven months of operation CCA realized a net profit of approximately \$82,000. 5/ No information has been developed reflecting that the trustees of CCA were paid for managing the firm.

We agree with the Field Office that the involvement of the plan fiduciaries in the CCA operation creates a high potential for the misuse of plan assets and constitutes a violation of Sections 406(b)(1) and (2). Moreover, by permitting CCA to (a) hold plan assets for an indefinite period of time, (b) earn interest on these assets, and, (c) retain the income earned, the plan trustees have been, in our opinion, conspicuously imprudent.

We recommend that a Demand Letter, signed by the Administrator, be issued to the plan trustees requiring them to:

1. Recover from CCA all income earned from plan assets;
2. Rescind the agreement between the plan and CCA, or revise the financial terms of the agreement so as to prevent CCA from "using," "benefiting," or "dealing" with plan assets in their own interest;
3. Remove those plan trustees who are also members of the Board of Trustees of CCA if they do not relinquish their CCA trusteeship. (This action should be taken in the event CCA continues to provide services to the plan.)

Please advise if you concur.

4/ CPA Firm of Goodard, Thomas and Company also responsible for certified audits of Health and Welfare Fund.

5/ See Exhibit No. 28.

Attachments

The CHAIRMAN. What was your reaction to that memo?

Ms. GALLAGHER. My reaction was that it was a matter referred to us for consideration of what action would be appropriate, and since it was not referred for litigation it was automatically not in our highest priority of consideration class but it appeared that it warranted serious consideration. It was sent to the counsel for litigation with that view.

The CHAIRMAN. Well, it was sent to you on July 11, 1980, and it sat there until June 17, 1981, almost a year after you received it. Now this was despite a letter sent on April 15, 1981, from the Office of Enforcement asking the Solicitor to expedite the review. As I understand it, your answer or your action to send a voluntary compliance letter came 5 days after I sent a letter to Secretary Donovan demanding action. Then you sent your response letter.

We will put in backlog documents No. 13, which describes this, 14 and 15.

[The material referred to follows:]

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210



Backlog.

Document #1713

JUN 17 1981

MEMORANDUM FOR: ALAN LEBOWITZ
Acting Assistant Administrator
for Enforcement

FROM: NORMAN P. GOLDBERG
Counsel for Litigation

SUBJECT: Ohio Carpenters Health and Welfare Plan
Case No. 53-11248

This is in response to a memorandum to Monica Gallagher, Associate Solicitor, dated July 11, 1980, from Mervyn Schwedt, then Acting Assistant Administrator for Enforcement, transmitting an ROI on the Ohio Carpenters Health and Welfare Plan (the Plan). The ROI indicates that the Plan has authorized an entity called the Carpenters Central Collection and Administrative Agency (CCA) to collect, on behalf of the Plan, all payments required to be made to the Plan by contributing employers.

The CCA is a non-profit corporation organized under the Non-Profit Corporation Law of Ohio that collects contributions for fourteen different plans or programs.^{1/} The Articles of Incorporation of the CCA provide that the purpose of the CCA is "[t]o establish, for the benefit of local unions and district councils affiliated with the United Brotherhood of Carpenters and Joiners of America and the Ohio State Council of Carpenters, a centralized collection and administrative agency to implement the collection and administration of fringe benefit and other funds designated in the terms of the collective bargaining agreements negotiated by the unions." The Articles of Incorporation of the CCA, signed April 1978, designate five initial trustees for the CCA. These five trustees are the same individuals that serve as union trustees

^{1/} These include, in addition to the health and welfare plan, a pension plan, two apprenticeship funds, a labor relations division, a construction advancement program, a supplemental unemployment benefit plan, a charity fund, a united appeals fund, a legal defense fund, a "heavy highway" fund, a union dues fund, and a vacation fund.

for the Plan. According to its "Code of Regulations," the CCA is headed by a board of trustees elected by "participating members" in the CCA. Participating members are local unions, district councils, and the executive secretary of the Ohio State Council of Carpenters. It is not clear whether the CCA's... members have replaced any of the original CCA trustees with new trustees. Neither the Articles of Incorporation nor the Code of Regulations of the CCA contain any provision indicating how the assets of the CCA are to be distributed upon its dissolution. Under the Ohio Non-Profit Corporation Law, if there is no provision in the articles of incorporation or code of regulations of a non profit corporation regarding distributions of its assets, "the assets shall be distributed pursuant to a plan of distribution adopted by the voting members at a meeting held for the purpose of voting on dissolution, or...[if] no plan of distribution is so adopted by the voting members, then the assets shall be distributed pursuant to a plan of distribution adopted by the trustees."

The document authorizing the CCA to collect contributions for the Plan was approved by the board of trustees of the Plan at a board meeting on August 23, 1978. It does not appear that the union trustees who act as trustees for the CCA abstained from this vote. The document was signed on behalf of the Plan by union trustee Milan Marsh as "Chairman [of the] Board of Trustees" on the same day the board approved it. 2/ With respect to the compensation of CCA for its services, the document provides as follows:

In consideration of the Carpenters Central Collection and Administrative Agency's collecting, administering and distributing the funds due under applicable collective bargaining agreements, the [Plan] agrees to pay its proportionate share of the costs of operating the Carpenters Central Collection and Administrative Agency. To defray such costs, the Carpenters Central Collection and Administrative Agency is directed and authorized to retain and apply to its costs such interest as may be earned by it in transactions with depository banks and other financial institutions, penalties and court costs and attorney fees due under applicable collective bargaining agreements.

2/ Although the document was not signed by anyone on behalf of the CCA, we infer that the arrangement with the CCA was negotiated on behalf of the CCA by the trustees of that entity (who were all Plan trustees when the CCA was formed a few months earlier).

Under this arrangement between the Plan and the CCA, the CCA deposits contributions received from employers in a trust account that is invested in short-term instruments. After verifying the amounts contributed, the CCA disburses the contributions in this trust account to the Plan. Interest earned on plan assets deposited in the trust account is retained by the CCA as compensation for its services.

In the memorandum of July 11, 1980, it is argued that the Plan trustees have been imprudent in "permitting CCA to (a) hold plan assets for an indefinite period of time, (b) earn interest on these assets, and (c) retain the income earned." We agree that the above-described arrangement between the Plan and the CCA does not appear to meet the requirements of section 404(a) of ERISA. It is further argued in the July 11 memorandum that "the involvement of the plan fiduciaries in the CCA operation" constitutes a violation of section 406(b) of ERISA. We agree that, with respect to the question of CCA's compensation, the CCA is a party whose interests are adverse to the interests of the Plan. Accordingly, we think that by voting to approve the arrangement between the Plan and the CCA, the union trustees who are also trustees of the CCA acted on behalf of a person with interests adverse to the interests of the Plan, in violation of section 406(b)(2) of ERISA. In accord with the foregoing, we have prepared a letter for the Area Administrator's signature proposing corrective action.

The ROI raises a question regarding the leasing of space by the Plan in a building owned by trustee Marsh's wife. The ROI indicates that the rent paid by the Plan for this space was not excessive, and that trustee Marsh abstained from voting on the question of whether the space should be leased. Accordingly, it does not appear that any action in respect to this matter is warranted.

U.S. Department of Labor

Labor Management Conference Administration
Washington, D.C. 20216

Reply to the Attention of: LBE



APR 11 1981

Buckley
Document #1214

MEMORANDUM FOR: Norman Goldberg
Counsel for Litigation
Attention: Jane Kheel

FROM:

May for Fite
Alan D. Lebowitz
Acting Assistant Administrator
for Enforcement, PWBP

SUBJECT:

Ohio Carpenters Health and Welfare Fund
Youngstown, Ohio
Case No. 53-11248

Attached is a memorandum from the Cleveland Area Office concerning the subject plan, which was referred to your office in July, 1980. Because of the continuing publicity concerning the subject and the recent complaint filed against the subject, we request that this matter be expedited.

Attachment

Reply to the Attention of LBE

APR 10 1981

Mr. James P. Moore
3128 Denver Drive
Youngstown, Ohio 44514

Dear Mr. Moore:

Thank you for your letter to Secretary of Labor Raymond J. Donovan expressing your concerns relative to, among other matters, activities of the Carpenters Central Collection and Administrative Agency. Your letter was referred to the Office of Enforcement for a reply with respect to the issues concerning the Ohio Carpenters Health and Welfare Plan. The Office of Labor-Management Standards Enforcement will address the issues concerning the Labor-Management Reporting and Disclosure Act of 1959 in a separate response.

As you know, the Cleveland Area Office of the Labor-Management Services Administration recently conducted an investigation of the Ohio Carpenters Health and Welfare Fund and of its relationship with the Carpenters Central Collection and Administrative Agency. This investigation was undertaken to determine if any provisions of the Employee Retirement Income Security Act of 1974 (ERISA) may have been violated by plan officials and other plan fiduciaries. The results of the investigation are under review to determine what action, if any, is warranted under ERISA.

Thank you again for your interest in bringing these matters to the attention of Secretary Donovan.

Sincerely,

Alan D. Lebowitz
Acting Assistant Administrator
for Enforcement
Pension and Welfare
Benefit Programs

cc: Chron
Enforcement (53-11248)
SOL (Khuel)
Chicago, RO
Cleveland, AO
Ex. Secretary

LMSA/PWBP/ENFORCEMENT/DPSI/Gwin/lw
4/1/81 N4720 36845

RIDING PAGE 15 June 1981

U.S. SENATE
 COMMITTEE ON LABOR AND
 HUMAN RESOURCES
 WASHINGTON, D.C. 20510
 D. NEW P. HUNTER, CHIEF COUNSEL AND STAFF DIRECTOR
 RUTH ANN PFEIFFER, CHIEF CLERK
 LAWRENCE C. DONOHUE, M.D., MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON LABOR AND
 HUMAN RESOURCES
 WASHINGTON, D.C. 20510

Backlog Document #15

June 12, 1981

Mr. Raymond J. Donovan
 Secretary
 Department of Labor
 200 Constitution Ave., N.W.
 Room South 2018
 Washington, D.C. 20210

Dear Secretary Donovan:

The Committee on Labor and Human Resources currently is conducting an oversight inquiry into allegations of mismanagement of pension fund assets by the Carpenters Union in the state of Ohio. I understand that your department is conducting similar inquiries under the file numbers L.M.-017882 and 53-11067. So that the committee can make a prompt decision regarding commitment of staff resources on this matter, I would appreciate your providing me copies of, or access to, all documents in these two files at your earliest convenience. Please direct any inquiries concerning this matter to Mr. James G. Phillips of the committee staff at 224-0187.

Your cooperation is greatly appreciated.

Sincerely,

Orrin G. Hatch

Orrin G. Hatch
 Chairman

OGH/jpc

The CHAIRMAN. Now this July 11, 1980 memo to you found that interest income accrued by trustees of the collection agency in fiscal 1979 came to \$244,000. In the next 5 months of the subsequent fiscal year the interest income was \$195,000 more. Why didn't you insist on having this money restored to the fund?

Ms. GALLAGHER. Senator, our analysis of the legal issues was that the question to be decided was whether this nonprofit corporation was receiving a reasonable amount in payment for its services. There was an assumption in the documents that we were furnished—in the OE analysis—that any amount that they were receiving would be prohibited, so there was some difference there in our assessment of the situation but we did agree that there were violations, and concurred with the recommendation made to use by OE that attempts be made to secure voluntary compliance.

The CHAIRMAN. Why didn't you then insist on them recompensating the fund to the tune of this \$244,000 plus \$195,000? By gosh, these guys were all union officials, and all they did was distribute money to various health and welfare funds, something that was done by a bank before for considerably less money.

Ms. GALLAGHER. If the information had been available which demonstrated that the amount received by this organization was unreasonable, then the analysis would have been a lot easier.

The CHAIRMAN. However, you admit it was not only unreasonable but that these were union leaders; so it was illegal for them to take money in a dummy foundation set up, it appears, to launder money through to wherever. Don't you admit that?

Ms. GALLAGHER. If we could have established that it was a dummy foundation set up to launder the money, I certainly would agree with you.

The CHAIRMAN. Did you even try to establish that? We have established it.

Ms. GALLAGHER. The investigative files did not establish that.

The CHAIRMAN. Well, we have and we think it is a serious problem. At least it looks to us as though there is a ripoff of the carpenters' funds right up there by their own union leaders setting up a dummy foundation to be able to handle these funds, when in fact the bank that used to do it did it for considerably less money.

Had this fund ever been audited by the Labor Department before?

Ms. GALLAGHER. I do not know, Senator.

The CHAIRMAN. Did you order an audit?

Ms. GALLAGHER. I am not in a position where I am able to do that.

The CHAIRMAN. Did you ask anybody to order an audit?

Ms. GALLAGHER. I am not in a position where I am able to do that.

The CHAIRMAN. Did you even make a recommendation that anybody look into this to see if there was a ripoff of these carpenters?

Ms. GALLAGHER. No, Senator. I concurred with the recommendation made to us.

The CHAIRMAN. Well, our staff has determined by a field investigation that the Labor Department allowed Milan Marsh, the union leader in that area, to self-audit and they accepted his word on the matter. Are you aware of that?

Ms. GALLAGHER. No, Senator.

The CHAIRMAN. Would that shock you if that did occur?

Ms. GALLAGHER. The statute provides that plans have to be audited on a regular basis and reports have to be made, and it certainly would be a violation if those reports were not filed as required by the statute.

Mr. CLAYTON. Mr. Chairman, on that particular case, we are still working on it in the Office of Enforcement, and we have asked them to do certain things including obtaining an independent audit of the fund. We asked them to do this in a voluntary compliance letter. They gave us back a letter which was not satisfactory to us, which basically said, "We haven't done anything wrong," and gave us conclusions, did not give us any fact, any background.

We have written back to them, saying, "The information you have given to us is not satisfactory and we want an independent verification of what has been happening to those funds." So the correspondence has been occurring within the last month or so.

The CHAIRMAN. You know where a lot of this is coming from? We have union workers coming into my office, telling me, "Thank goodness somebody is looking into this stuff," after having had their lives threatened and everything else.

Right in the Department of Labor memorandum—this is backlog document No. 16, and we will place it in the record at this point, without objection.

[The material referred to follows:]

Backlog Document 71-72

U.S. Department of Labor

Labor-Management Services Administration
 Room 821 Federal Office Building
 1240 East 9th Street
 Cleveland, Ohio 44199

Reply to the Attention of: LFCCO



MAY 7 1980

MEMORANDUM FOR: Assistant Administrator
 Division of Enforcement, PWBP

THRU: Kenneth M. Iazar, RA/LMSA
 Chicago Region

ATTN: David R. Dalton, ARA/PWBP
 Chicago Region

FROM: Joseph D. Ciola, AA
 Cleveland Area Office

SUBJECT: OHIO CARPENTERS HEALTH & WELFARE PLAN
 4800 Belmont Avenue
 Youngstown, Ohio 44505
 53-11248, F.48

Attached is an Action ROI detailing issues under Section 404(a) and 406(b) of the ERISA.

I. Creation of a Collection Agency Comprised of Trustees of Subject Health and Welfare Plan; Prohibited Transaction, 406(a)(1)(c) and 406(b)(2); Prudency Requirements 404(a)(1)(A)&(B)

1. Prohibited Transaction, 406(a)(1)(C)

Trustees of the Health & Welfare Plan have caused the plan to engage in transactions constituting direct furnishing of services between the plan and The Carpenters Collection & Administration Agency (CCA) which is a party in interest per Section 3(14)(G) and its trustees who as union officials are parties in interest per Section 3(14)(A) and (H).

As reflected in the report, the five trustees of the CCA are the only members of the corporation. They constitute the entire voting power and control of the CCA.

CCA's means of defraying operational costs, whereby they retain interest earned on employer contributions and employer penalties, is indirectly the method CCA is paid for their services and represents compensation. CCA had income over expenses of \$90,000 to \$130,000 in its first fiscal year. No certified audit had been performed, but one is currently being conducted. PWBP will receive a copy of the auditor's opinion upon completion. Interest income for the first fiscal year was \$244,863. Interest income for the first five months of the subsequent fiscal year was \$195,211 which included approximately \$50,000 in each of the last two months—October and November 1979. Consequently, the "compensation" CCA has received is in excess of the services rendered and the exemption provided by Section 408(b)(2) is not applicable. CCA has not yet determined what they will do with the excess of funds. Examination of CCA disbursement records did not disclose any payments to plan trustees, CCA trustees or union officials.

2. Prohibited Transaction 406(b)(2); Prudency Requirements 404(a)(1)(A)&(B)

CCA's procedure for earning interest is detailed in the ROI. This procedure has the potential for substantial abuse because the longer the lag between receipt of employer contributions and disbursement to the plans the greater is the amount of interest that will be earned by CCA.

Employer contributions should be assets of the plan available for plan use upon contribution by the employer. By having another entity use these contributions temporarily for their own use, the plan is experiencing a loss of funds. Consequently, the trustees of the plan have failed to act in a prudent manner. Also, the trustees have acted in a transaction involving the plan on behalf of the CCA whose interests are adverse to the interest of the plan, as evidenced by the aforementioned loss of funds, resulting in a 406(b)(2) violation. As detailed in the report, none of the CCA trustees who are also plan trustees absented themselves from the CCA proposal to the plan, and, therefore, have not met the conditions of DOL Regulation 2550.408 b-2(f), Example (7) that provides a situation in which trustees have not engaged in an act described in Section 406(b). No exemptions appear to have been obtained for the CCA arrangement.

The recommended action to correct the above violations is to require the CCA to allocate the excess funds to the Health & Welfare Fund and other involved benefit plans and to require full financial disclosure to the plans.

II. Occupancy by CCA and the Plan of Building Owned by Trustee of the Plan, Prohibited Transaction 406(a)(1)(A)

J. Prohibited Transaction, 406(a)(1)(C)

As detailed in this report, the CCA and the plan rent space in a building owned by PARKWOOD ENTERPRISES whose principal owner is the wife of plan trustee Milan Marsh. The wife of Milan Marsh is a party in interest per Section 3(14)(F).

Investigation disclosed that the office space rented meets the terms of DOL Regulation 2550.408 b-2(a) for the exemption provided by Section 408(b)(2).

Interviewed individuals refused to provide complete details concerning ownership and operations of PARKWOOD ENTERPRISES. In view of the exemption, further pursuit of this issue through issuance of subpoenas does not appear to be warranted.

III. Conference Expenses

Prudency Requirement 404(a)(1)(A)&(B)

As reflected in the ROI, a lack of proper accountability to the plan for many of the trustees' conference expenses existed. It is recommended that upon final disposition the trustees be advised in writing to properly follow the Conference Expense & Reporting Policy they have adopted.

IV. Taft Hartley-Possible Violation

Employer contributions received by the CCA whose only trustees are representatives could possibly be in violation of Taft-Hartley, and the matter should be considered for referral to Justice.

V. The FBI and IRS-CID are investigating issues relating to the Carpenters Collection and Administrative Agency and PARKWOOD ENTERPRISES and have been in contact with LMSA.

The CHAIRMAN. With regard to this particular Carpenters Collection Administrative Agency, it says right in the last paragraph on the front sheet that "no certified audit had been performed but one is currently being conducted. PWBP will receive a copy of the auditor's opinion upon completion."

Now what this means is that they have told PWBP that they are auditing it but the Labor Department did not do this itself. Now are you saying you are in the process of getting that done on this case?

Mr. CLAYTON. Yes.

The CHAIRMAN. That pleases me, I will tell you.

Mr. CLAYTON. They came back and gave us some stuff. We told them that was not satisfactory and that we expect further verification of—

The CHAIRMAN. I commend you for that. I will say this: We have asked GAO to look into it as well because it appears to be a very serious problem. We have had union people coming in and out of our office now for a number of months, complaining about some of these things in some of these areas. This is just one of many. In some of these instances we have had to refer them to law enforcement officials because they have been threatened.

Mr. CLAYTON. Anything we can do to help you, we are committed to do, Mr. Chairman, but this particular matter we are still working on. It is very actively being pursued.

The CHAIRMAN. Ms. Gallagher, this May 7, 1980 memo from Labor's Cleveland area office to the Enforcement Office indicated that monthly interest accruing to trustees of the collection agency was up to \$50,000 a month or \$600,000 a year in October and November of 1979. Have you done anything to check to see if this continues to be ongoing or if this is a continuation of what I have been describing?

Ms. GALLAGHER. Mr. Chairman, what we did in our office was to review the investigative file that was referred to us and to concur in the recommendation made, with some modifications of the theory. The Department may be verifying those facts at this moment but I am not, our office is not.

The CHAIRMAN. You are going to check into it, then, and are going to find out just what is being done. You are going to get to the bottom of it and bring litigation or even criminal action if necessary?

Mr. CLAYTON. Yes; a matter of fact, the most recent correspondence is February 9. We got some documents from the plan on February 9, which we are reviewing now, which they allege are audits, independent audits. Now whether or not those audits are satisfactory, we have not determined yet.

The CHAIRMAN. Are you sending in your own auditors, is what I am asking you.

Mr. CLAYTON. Well, that is the issue. We are trying to find out whether in fact those audits that have been done are independent—

The CHAIRMAN. I am telling you right now that we have had allegations by sources there that this is a laundering operation for the benefit of certain union leaders, in particular one Milan Marsh. Now whether that is true or not, I do not know. It appears that

this particular CCA may have been overcharging for the benefit of certain individuals. I would think that you have to get your own auditors out there and not rely on them providing any documents. Would you do that for us?

Mr. CLAYTON. Yes.

The CHAIRMAN. OK. I think you have certainly gone the right way. I appreciate that. But I think you have to get into this thing, and you have to do it right now. I would like to have a complete report on it when you do. Could we have a copy of that as well?

Mr. CLAYTON. Yes; we will be happy to keep you informed as to what is going on and—

The CHAIRMAN. Will you send us copies of all documents that you acquire?

Mr. CLAYTON. Yes; we are pushing them now and we have been pushing the investigators. By any means, we have not accepted their reports, we have not accepted their paperwork. They have merely given it to us and we are trying to make that determination, whether what they have done is satisfactory. Of course, if your information is correct it is not going to be satisfactory, and we will get to the bottom of it.

The CHAIRMAN. I think this just has to be reviewed and has to be completely looked at right now. I do not think you can let it wait any longer. We have been investigating it too, and will cooperate with and give you whatever information we have.

Mr. CLAYTON. Thank you.

The CHAIRMAN. I want to thank you, Ms. Gallagher, for appearing here today and giving us information that you have. We are going to need you again for the Culinary Workers case tomorrow, so we would appreciate it if you will be here with us here tomorrow.

Ms. GALLAGHER. Thank you, Mr. Chairman. I will.

The CHAIRMAN. I have appreciated your candor very much. I think maybe this hearing could have an awful lot to do with helping all of us to do a better job for workers in this country.

Mr. Ryan, while we have you here, let me just ask you a few more questions. First, you have indicated that you either have a tracking system in place to check statute of limitations problems, or are in the process of obtaining one. You have some queasiness about it.

Mr. RYAN. I have queasiness only because the ERISA program is a significant part but as far as caseload is concerned, it is a minute part of what we are about in the Solicitor's Office at the Department of Labor. We have ongoing within the Solicitor's Office a program right now to move our manual case tracking systems onto a computerized system. We have been doing this for the last 2 months. Therefore, I would like to be able to say to you that I am positive that all 30,000 cases are on track and I know exactly what is going on but I cannot tell you that right now. Quite frankly, I feel a little bit more comfortable in the pension program than I do in some of the other programs.

The CHAIRMAN. Therefore, you feel that you have been correcting at least this area of concern.

Mr. RYAN. We are working very hard at it. Quite frankly, Mr. Chairman, anything that your investigators or that you—you are

an experienced litigator—any type of advice that you may have, we would probably benefit from it.

The CHAIRMAN. Well, we would be happy to help if we can.

You state on page 12 of your testimony that the Department has been criticized for not properly overseeing activities of the independent investment managers in the Culinary Workers case. You also state that such oversight is not the job of the Department of Labor, and that "the Department's obligation is to assure compliance with ERISA and that the fiduciaries are held accountable if they abuse or misuse their positions."

Now section 404-a-1 of ERISA sets forth a prudence rule that fiduciaries must follow with respect to sound investments. Do you think the \$10 million or so expended by investment managers to bail out the Shenker properties is prudent?

Mr. RYAN. The direct answer to that I think will await determination by the court in Las Vegas, and I am not going to answer your question directly—

The CHAIRMAN. However, you yourselves admit that the borrowed money, including interest, now totals \$45 million. The value of the properties today is around \$11 million. Yet they spent \$10 million more trying to preserve \$11 million worth of assets.

Mr. RYAN. The estimate of the Karsten Associates is that it is now worth \$11 million. The defendants in this case have joined, as third party defendants, the investment managers. One of the issues involved in the litigation—which is why I am a little reluctant to answer your question directly in a public forum—one of the issues involved is a defense, an affirmative defense by Mr. Shenker, that much of the damage that was done to the fund, that is the loss—

The CHAIRMAN. Was done by the managers?

Mr. RYAN [continuing]. Was done by the investment managers, and that the investment managers were selected by the Department of Labor. The Department of Labor has responded that it did not select Upper Avenue Bank, nor did it select the Karsten Associates—

The CHAIRMAN. I hope you did not select them. There are a lot of questions about the managers themselves, aren't there?

Mr. RYAN. As you are probably aware because we have talked about it, and I certainly have talked with your investigators about it, we feel probably stronger about this than the prior administration on how far we will get involved, if at all, in the selection or the identification or approval of investment managers in these cases. We feel strongly that we should have a veto power, that is, disapproval right but that we should not be selecting investment managers.

The CHAIRMAN. I really wonder if you shouldn't be evoking your authority to do everything you can to try to get repayment of these funds; \$45 million. If you string that out at present interest rates over a 20-year period, you are talking about hundreds of millions of dollars. When you consider that originally this started out as 65 percent of the total funds of the Culinary Workers, many of whom work for minimum wage, the reality of all this becomes far more clear.

Mr. RYAN. Senator, as I said, this issue—that is, whether or not the investment managers are liable for some of the damages—is before the court.

The CHAIRMAN. You say on page 13 of your testimony that, "We also will be focusing our attention on those people who illegally profit from their actions relating to employee benefit plans." Does this mean that you are going to be asking for a strengthening of ERISA, to make prohibited transactions a criminal as well as a civil violation?

Mr. RYAN. The direct answer to that is that we would like to wait until the completion of this hearing, and if there are any in the near future, before we come forward to you either formally or informally and not only tell you what we are doing to make this program work a little better but also sit down with you to see if we need any change in the legislation.

The CHAIRMAN. Thank you, Mr. Ryan.

I have one more question for you, Mr. Clayton: On page 5 of your testimony you state that, "Unfortunately in the past a number of plan fiduciaries may have known that they could avoid compliance with the statute because the chances were good that the Department would not sue." I certainly agree with your perception, after reviewing the performance of prior Solicitors' Offices on the matters before us.

Now I personally believe there has been an antiprossecution attitude down there that is wrong. This attitude of bringing cases primarily for the purpose of establishing precedents is wrong, also. I think precedents will be established as you protect those funds. I would suggest, and I commend you for it, that the purpose of your office basically—and, I think, of Ms. Gallagher's office—is to protect the funds for those workers so that when they retire there will be something there. Not only something there but something that has been well-managed and which has been brought along through the intervening years.

Can I just ask you generally, do you feel confident that the future handling of this area is going to be better? We have only highlighted a couple of areas of concern here today. We are getting into other cases as well. But do you think that future handling can resolve some problems concerning me today?

Mr. CLAYTON. To put it in the vernacular, enforcement is in as far as I am concerned in the pension program. We are going to do everything we can to make our presence felt. We are reviewing our enforcement procedures from top to bottom to do exactly that. How can we maximize our enforcement presence and impact throughout the country?

Mr. Ryan has given us some additional lawyers. With the decentralization program that could very easily give us access to a portion of another 200-plus lawyers around the country. I do not think there is any question but there are going to be more people sued, and that our impact is going to be felt. I agree with you 100 percent that our job is to protect plan assets, people's hard-earned pension rights. As I said in my statement, I think we ought to be making the decisions. We ought to give those people the same kind of protections of their pension rights as we would like to have for

our own. That ought to be the standard and I am going to do everything that I can to enforce that standard.

The CHAIRMAN. Well, we appreciate that. I have appreciated all the testimony here today. We have not even started on this Culinary suit yet, but already have had a number of things brought out I think are serious. You have all indicated you are going to resolve these problems. Hopefully we can do that.

I am going to turn to Mr. Young now. If you folks would like to leave, I know you are busy and have a lot to do at the Department of Labor. That will be fine.

We are going to take your testimony today, Mr. Young. Then we are going to bring you back again tomorrow. I have a lot of questions for you tomorrow specifically on the Culinary Workers case. We would appreciate it if you and Ms. Gallagher will be back tomorrow.

Mr. YOUNG. Yes.

The CHAIRMAN. If the rest of you would care to leave, I know you have a lot to do.

Go ahead, Mr. Young.

Excuse me. I did not turn to Senator Nickles for any questions he may have. I am sorry.

Senator NICKLES. I have no questions. Go ahead.

The CHAIRMAN. OK. Go ahead, Mr. Young.

STATEMENT OF JOHN HARDIN YOUNG, TRIAL COUNSEL, U.S. DEPARTMENT OF LABOR

Mr. YOUNG. Mr. Chairman, Senator Nickles, I am John Hardin Young, trial counsel to the Department for *Donovan v. Schmoutey*. Mr. Chairman, I am pleased to appear before you, accompanying the Solicitor and Mr. Clayton, to discuss the Department's litigation in *Donovan v. Schmoutey*.

In order for the committee to understand the complexity of this litigation, I would like to discuss in detail three aspects: First, the relationship of some of the defendants; second, the amount of money involved in the loans; and, third, the variety of legal motions and claims that have been filed in this litigation.

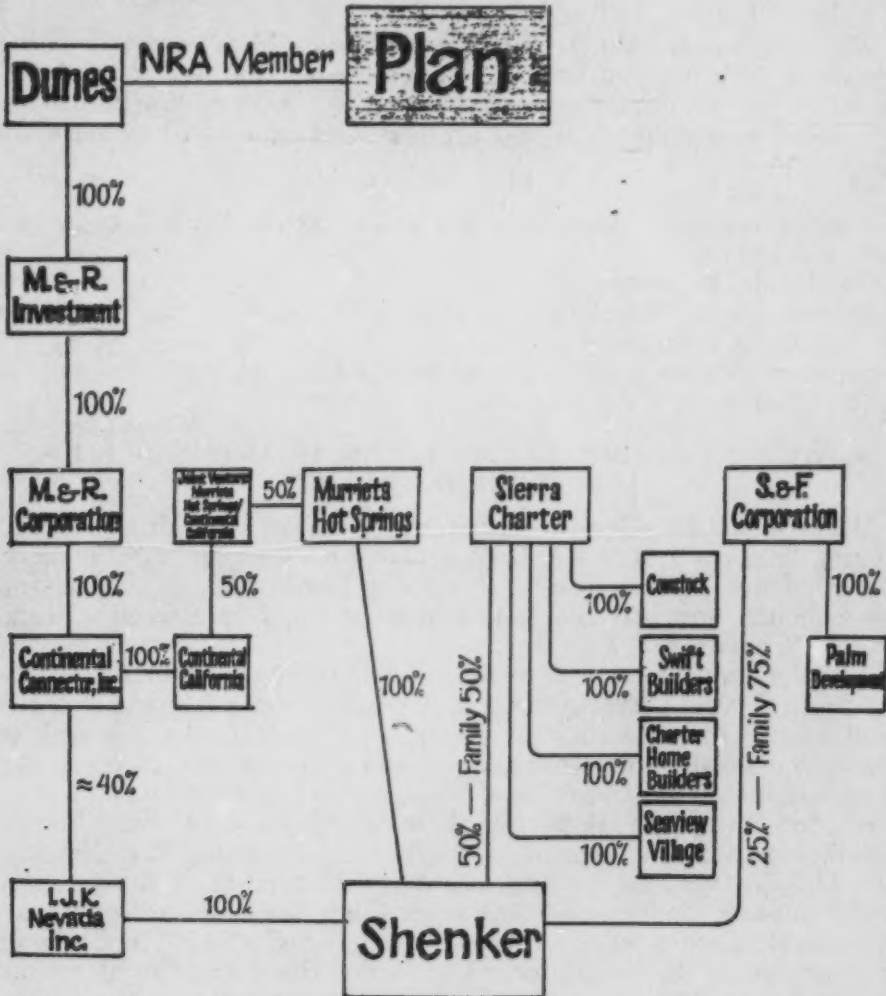
At the time the Department initiated its suit, Mr. Morris Shenker owned 100 percent of the holding company IJK Nevada, Inc. IJK, in turn, owned approximately 40 percent of the publicly held company, Continental Connector Corp. Continental Connector, in turn, through a wholly owned subsidiary of which Mr. Shenker is chairman of the board, owns the Dunes Hotel and Country Club in Las Vegas. The Dunes is a contributing employer to the Southern Nevada Culinary and Bartenders Pension Trust.

As Mr. Ryan indicated in his presentation, Mr. Shenker also owns 100 percent of Murrieta Hot Springs, and he and his immediate family own 100 percent of Sierra Charter Corp.

These relationships are graphically set forth for the committee in a chart which is entitled "ERISA §406 Violations/Morris A. Shenker Related Entities as of March 1977."

[The material referred to follows:]

ERISA § 406 Violations/ Morris A. Shenker Related Entities as of March 30, 1977



Mr. YOUNG. Senator Nickles, as you can see from the chart that is entitled "ERISA Section 406," the plan is directly related to Mr. Shenker through various corporations which start at the Dunes and go through to LJK Nevada and then to Mr. Shenker. Mr. Shenker is also the 100-percent owner of Murrieta Hot Springs and, with his family, is the 100-percent owner of Sierra Charter Corp. As the Solicitor testified, both Murrieta Hot Springs and Sierra Charter were the main vehicles in which money from the plan went to Shenker-related organizations.

It is our contention that the loans by the fund's trustees to Sierra and Murrieta were for the benefit of Mr. Shenker, who is a party in interest due to his ownership of and position in the Dunes Hotel and Country Club, an employer contributor to the plan. The loans, moreover, were made under highly unusual terms and constituted, at the time they were made, over 65 percent of the total assets of the plan. We believe that these loans therefore violated the prohibited transactions and fiduciary responsibility provisions of ERISA.

I would now like, if I may, Senator, to detail for you the chronology of loans that is the subject of this litigation and the subject of our second chart.

On March 24, 1973, the plan's trustees agreed to loan Murrieta \$2 million in plan assets. On July 30, 1973 the plan agreed to loan an additional \$5 million to the company. The total \$7 million was disbursed.

On June 7, 1974 the plan's trustees agreed to loan \$8 million to Sierra. Of this amount, approximately \$7.45 million was actually disbursed.

On July 28, 1975, the trustees and Sierra entered into an agreement, known as the first addendum, for additional funding. This agreement called for the plan to loan Sierra an additional \$1.35 million, which was advanced between July and December 1975. The first addendum also provided that Sierra would assume the obligations for the payment of interest due the plan from Murrieta on the original \$2 million loan.

The first addendum was followed by a further commitment by the pension plan to loan money to Sierra under a December 1, 1975 agreement, known as the second addendum. Pursuant to this document, the trustees and Sierra agreed that Sierra would guarantee all of Murrieta's indebtedness to the plan, and the interest then due and owing from Murrieta and Sierra to the plan. Repayment of the money under the first and second addendum and the 1974 loan agreement to Sierra Charter were personally guaranteed by Mr. Shenker.

The second addendum called for the plan to loan Sierra additional sums of money based on monthly draw requests prepared by Sierra. Under these draw requests over \$8.6 million was disbursed between December 1975, and March 30, 1977, when the Department filed suit. At the time of suit, money was being distributed by the plan to Sierra at the rate of over \$500,000 a month.

At the time the complaint was commenced, the principal and interest disbursed in connection with these loans was approximately \$27.25 million. As of the end of 1981, the principal and interest, based on the independent assessment of the asset manager,

Thomas L. Karsten Associates, amounted to over \$45.2 million. This is the amount that is set forth on the chart before the committee entitled "Debt Owed to Southern Nevada Culinary and Bartenders Pension Trust from Shenker Defendants in *Donovan v. Schmoutey*."

[The material referred to follows:]

**Debt Owed to
Southern Nevada Culinary and Bartenders
Pension Trust from Shenker Defendants
in Donovan vs. Schmoutey, No. CV-LV-77-47 RDF
(Filed March 30, 1977, D.Nev.)***

		<u>February 28, 1981</u>	<u>December 31, 1981</u>
Murrieta Hot Springs			
Loan I	Principal	\$2,000,000	\$ 2,000,000
	Interest	1,013,276	1,179,942
	Subtotal	\$3,013,276	\$ 3,179,942
Loan II	Principal	\$ 5,000,000	\$ 5,000,000
	Interest	2,849,661	3,284,094
	Subtotal	\$ 7,849,661	\$ 8,284,094
Subtotal Murrieta Hot Springs		\$10,862,937	\$11,464,036
Sierra Charter Corporation	Principal	\$17,930,000	\$17,930,000
	Interest	12,900,000	15,832,527
Subtotal Sierra Charter Corp.		\$30,830,000	\$33,762,527
Principal and Interest Total		\$41,693,467	\$45,246,573

* Based on calculations of principal and interest only under method used in "Assessment by Thomas L. Karsten Associates of the Real Estate Related Assets of the Southern Nevada Culinary and Bartenders Pension Trust" filed May 14, 1981.

Mr. YOUNG. It is significant to note that the \$45 million figure does not include the value of the property now in the possession of the investment manager, which would be a credit of approximately \$10.9 million, based on the investment manager's May 1981 assessment. The \$45 million figure also does not include additional advances to the investment manager for real estate related investment services and fees since March 1977.

The chart further does not include any credits which are in dispute in the litigation possible payments made since the filing of the suit. Last, the \$45 million figure does not factor in the cost of money from March 30, 1977, based on the opportunity cost of that money. It is based on the interest rates compounded as if the agreements had been in force.

I would like to elaborate on a point raised by the Solicitor. When the Department first initiated suit, the named defendants included only the trustees and Mr. Shenker and companies related to him and involved in these loans. Since then, the defendants have added a number of third parties as permitted by Rule 14 of the Federal Rules of Civil Procedure. These additional parties have led to increased discovery into not only admissible evidence but—as again permitted by the Federal Rules of Civil Procedure—into discovery of any information which appears reasonably calculated to lead to the discovery of admissible evidence under Rule 26(b).

We have brought with us a chart, prepared by the Court for its recent case management hearings, which details many of the claims in this litigation. This chart, which is now before you, is approximately 7 by 3 feet and demonstrates the complexity of the litigation. The chart, while it may be difficult to read, connects only some of the basic pleadings in this case. The chart demonstrates that *Donovan v. Schmoutey* is not a procedurally simple matter.

[NOTE.—Due to mechanical limitations the chart referred to was retained in the files of the committee.]

Mr. YOUNG. To highlight just a few of the claims which are set forth on the chart, some of the trustees have sued the plan's attorneys for malpractice; some have also sued the accountants and administrators of the plan, alleging negligence; Karsten, as asset manager, has sued Shenker on the defaulted loans; and a number of the trustees have sued their fiduciary liability insurance carriers, who have denied coverage.

The CHAIRMAN. It is a little like a bunch of crooks running for cover, isn't it? You did not answer that. You just smiled and nodded, indicating yes.

Mr. YOUNG. If I could, Senator, I will stick to the facts. I do not want to tip my opposing counsel off on my closing.

[Laughter.]

The CHAIRMAN. OK.

Mr. YOUNG. Although this litigation is procedurally complex, we have not in the last year lost sight of the basic, undisputed, and important facts that are crucial to this litigation. Those are: First, loans were imprudently made for the benefit of a party in interest; second, the loans are in default; third, the loans—although many are personally guaranteed by Mr. Shenker—have not been repaid; and, fourth, as a result of this unlawful course of conduct, the

beneficiaries and participants of the pension plan have been severely injured.

Because of the complexity of this case, at our request the Court has held a series of case management hearings. The last conference was held on February 8, 1982. These conferences have dealt specifically with the discovery process and the most efficient means of trying this litigation. As a result of these conferences, I am hopeful that the Court will set an early trial date, which will be in the interest of returning to the fund's participants and beneficiaries the money which has been unlawfully loaned to entities related to Mr. Shenker.

I thank you, Mr. Chairman.

[The prepared statement of Mr. Young follows:]

STATEMENT OF
JOHN HARDIN YOUNG,
TRIAL COUNSEL
U.S. DEPARTMENT OF LABOR
BEFORE THE COMMITTEE ON LABOR AND HUMAN RESOURCES
U.S. SENATE

February 23, 1982

Mr. Chairman and Members of the Committee:

Mr. Chairman, I am pleased to appear before you, accompanying Mr. Ryan and Mr. Clayton, to discuss the Department of Labor's litigation in Donovan v. Schmoutey.

In order for you to understand the complexity of this litigation I would like to discuss in detail three aspects: first, the relationships of some of the defendants; second, the amount of money involved in the loans; and third, the variety of legal motions and claims that have been filed in this case.

At the time the Department initiated its suit, Mr. Morris Shenker owned 100 percent of the holding company IJK Nevada, Incorporated. IJK, in turn, owned approximately 40 percent of the publicly held company, Continental Connector Corporation. Continental Connector, in turn, through a wholly owned subsidiary of which Mr. Shenker is the Chairman of the Board, owns the Dunes Hotel and Country Club in Las Vegas. The Dunes is a contributing employer to the Southern Nevada Culinary and Bartenders Pension Trust.

As Mr. Ryan indicated in his presentation, Mr. Shenker also owns 100 percent of Murrieta Hot Springs, and he and his immediate family own 100 percent of Sierra Charter Corporation,

It is our contention that the loans by the Fund's trustees to Sierra and Murrieta were for the benefit of Mr. Shenker who is a party-in-interest due to his ownership of and position in the Dunes Hotel and Country Club, an employer contributor to the Plan. The loans, moreover, were made under highly unusual terms and constituted, at the time they were made, over sixty percent of the total assets of the Fund. We believe that the loans therefore violated the prohibited transactions and fiduciary responsibility provisions of ERISA.

I would now like to detail for you the chronology of the loans which are the subject of the litigation.

On March 24, 1973, the Plan's trustees agreed to loan Murrieta \$2 million in plan assets. On July 30 of that year, the Plan agreed to loan an additional \$5 million to the company. The total \$7 million was disbursed.

On June 7, 1974, the Plan's trustees agreed to loan \$8 million to Sierra. Of this amount, \$7,450,000 was actually disbursed.

On July 28, 1975, the trustees and Sierra entered into an agreement, known as the First Addendum, for additional funding. This agreement called for the Plan to loan Sierra an additional \$1,350,000, which was advanced between July and December 1975, and for Sierra to assume the obligation for the payment of the interest due the Plan from Murrieta on the original \$2 million loans to Murrieta.

This agreement was followed by a further commitment by the Fund to loan money to Sierra under a December 1, 1975 agreement known as the Second Addendum. Pursuant to this document, the trustees and Sierra agreed that Sierra would guarantee all of Murrieta's indebtedness to the Plan, and the interest then due and owing from Murrieta and Sierra to the Plan. Repayment of moneys loaned under the First and Second Addenda and the 1974 loan to Sierra Charter Corporation were also personally guaranteed by Mr. Shenker. These funds were to be added to the principal amount of indebtedness and bear interest at the same rate as had been previously agreed for the principal. Any unpaid interest thereafter was also to be added to the principal. The total amount of unpaid interest which had been added to the principal as of the time of filing suit in March 1977, was approximately \$2.8 million.

In addition, the Second Addendum called for the Plan to loan Sierra an additional sum of money based on draw requests prepared by Sierra. Under these draw requests over \$8.6 million was disbursed between December 1975 and the time the Department initiated the suit. At the time of suit, the money was being distributed by the Plan at the rate of over \$500,000 per month.

At the time the legal action was commenced, the principal and interest disbursed in connection with these loans was approximately \$27.25 million. As of the end of 1981, the principal and interest, based on the independent assessment of the asset manager, Thomas L. Karsten Associates, amounted to over \$45.2 million. However, the total estimated recovery from collateral that secures the loan is evaluated at only about \$10.9 million by Karsten. However, Karsten has stated that this may be a conservative estimate of value.

I would like to elaborate on a point raised by the Solicitor. When the Department first initiated the suit, the named defendants included only the trustees and Mr. Shenker and companies related to him and involved in these loans. Since then, the defendants have added

a number of third parties as permitted under the Federal Rules of Civil Procedure. These additional parties have led to increased discovery into not only admissible evidence but, as again permitted by the Federal Rules of Civil Procedure, into the discovery of a host of other areas as well.

We have brought with us a chart--prepared by the Court--which details many of the claims in the litigation. It clearly demonstrates that Donovan v. Schmoutey is not procedurally a simple matter. To highlight just a few of the claims which have been added to the litigation: some of the trustees have sued the Plan's attorneys for malpractice; some have also sued the accountants and administrators of the Plan alleging negligence; Karsten, as asset manager, has sued Shenker on the defaulted loans; and a number of the trustees have sued their fiduciary liability insurance carrier, Lloyds of London, who has denied coverage.

Because of the complexity of the case, at our request the Court has held a series of pretrial conferences on case management. The last conference was held on February 8, 1982. These conferences have dealt specifically with the discovery process and the most efficient means of trying this litigation. As a result of these conferences, we are hopeful that the Court will set an early trial date which will be in the interests of returning to the Fund's participants and beneficiaries the money which has been unlawfully loaned to entities related to Mr. Shenker.

I would be pleased to answer any questions you may have concerning the litigation.

Thank you.

The CHAIRMAN. Thank you. We will get into your testimony in specifics tomorrow. We appreciate what a complex and difficult case this is. We also appreciate that Mr. Shenker has been operating for years with all kinds of union pension funds involving hundreds of millions of dollars: \$160 million from the Teamsters; \$24 million from the Culinary Workers, now with interest up to \$45 million—only God knows how much these original borrowings are all worth today—and \$11.5 million from the St. Louis Steamfitters. When I think of all these workers and how hard they work—because I used to work with my hands, too, as a union metal lather—all I can say is that we are going to get into this.

I appreciate your being willing to come in and testify. We will expect you here first thing in the morning.

Mr. YOUNG. Yes, Senator.

The CHAIRMAN. I think that today's testimony is commendable. Let me make some suggestions: Mr. Ryan, I think you should be less interested in policy and more interested in getting your shop in order. You have inherited what I consider to be an awful mess. I think this committee can help you with that. We have no desire to point at people or to ridicule your Department. We have had our difficulties in the past, ever since I have been on this committee, but we can help.

I suggest that you get the Solicitor's Office in shape. I do not think it is. The Solicitor of Labor comes in and says there are some 30,000 cases in his office, and that he is not sure that there is any real system in place for statute of limitations verification or tracking of statute of limitations. I think that is a pretty sorry state of affairs. I know you know that. We have chatted about it and I appreciate your attitude here today.

Ms. Gallagher, I have appreciated you. It has not been easy for you to testify and admit that some of these errors have occurred. It is a lot more difficult for those who have paid in to these funds all their working lives, who now are facing possible loss of significant amounts of their pension programs and pension moneys. It is a lot more difficult for them than it is for you. There is no question in my mind you are an excellent attorney with an excellent legal mind. I can recognize that and can compliment you for it. I have appreciated your straightforward testimony and hope we can have you testify in as straightforward a fashion on some other cases as well.

Mr. Clayton, I personally believe that your attitude is as good as anybody's here. Of course, you are from my home State of Utah, so naturally I would feel that way.

Mr. RYAN. Senator, I am moving there too, by the way.

The CHAIRMAN. You are going to have to improve before we will accept you. [Laughter.]

That is only meant humorously.

However, Mr. Clayton, I think that if you will do what you have said you are going to do today or what you have already started to do, then you will have done every worker in this country who pays into these funds a tremendous, tremendous favor. There should not be any losses like this. There should not be any of these moneys manipulated and run by racketeers, shady businessmen, or crooked union officials.

We have not even gotten into the culinary case yet, but we wanted to get some of these preliminaries out of the way. It has been difficult for you. It has been difficult for me.

Mr. Lebowitz, I know you are going to do everything you can do. Mr. Young, we will see you tomorrow. We appreciate this testimony, and I think it has brought us a long way, getting preliminaries out of the way. We are going to have one more witness today. I think we have made a lot of headway here today and we will get into this in detail tomorrow.

Therefore, thank you for coming.

We will now call Mr. Thomas Kane to the witness stand at this time. Mr. Kane is a division chief of the Office of Reports and Enforcement.

Mr. Kane, we are looking forward to your testimony at this time. Let's swear you in.

Mr. Kane, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KANE. I do, sir.

The CHAIRMAN. Mr. Kane, the time is yours.

STATEMENT OF THOMAS KANE, CHIEF, DIVISION OF REPORTING ENFORCEMENT, OFFICE OF ENFORCEMENT, PENSION AND WELFARE BENEFIT PROGRAMS, U.S. DEPARTMENT OF LABOR

The CHAIRMAN. Mr. Kane, could you tell us your current position in the Department of Labor?

Mr. KANE. Sir, presently I am a division chief in the Office of Enforcement in the pension and welfare benefit program.

The CHAIRMAN. Were you in this same position in March of 1977 when the suit was filed by the Department against the fund trustees?

Mr. KANE. Yes, sir, I was.

The CHAIRMAN. What is your investigative and educational background.

Mr. KANE. Sir, I attended St. John's University from 1946 to 1949, at which time I graduated with a B.A. degree and a major in accounting. After that I then was employed in a CPA outfit for about a year and a half, at which time I then received an appointment to the FBI. I was a special agent/accountant with the FBI from 1951 to 1955. After that, I then became an investigator/accountant with the New York State Crime Commission.

After that, I left and went with the U.S. Department of Labor in 1960. I have been with the Department of Labor from 1960 to the present time as an investigator in the field of the LMRDA, the WPPDA, and ERISA.

The CHAIRMAN. Now, Mr. Kane, just relax. You are OK here. We are just going to ask some basic questions, and I think it will help us to get to the bottom of some of these things.

There is no question, as you have recited your background, that you have had an extensive investigative background, especially in the field of labor law. I think you would agree with that.

Mr. KANE. Thank you, sir.

The CHAIRMAN. It is obvious to me that your training, education, and work experience indicates that you should be considered an expert in the pension investigation fields.

Mr. KANE. Thank you, sir.

The CHAIRMAN. What prompted the investigation leading to the filing of the civil suit against the trustees of the fund and Morris Shenker?

Mr. KANE. Sir, prior to answering that question, may I make a short statement, please?

The CHAIRMAN. Sure.

Mr. KANE. When I was informed that I was to be a witness before this committee concerning the Southern Nevada Culinary Workers case, I requested the Office of the Solicitor to provide me with an attorney who was familiar with this case. Since this case is still pending in the U.S. District Court, I wanted this attorney to sit beside me and monitor the questions and answers I was to give. I was fearful that my answers might in some way hurt this pending case.

My request for this attorney was denied me. Therefore, I am now ready to answer any and all questions of the committee, fully and truthfully, and to the best of my ability.

The CHAIRMAN. Well, we appreciate that. What really prompted the investigation leading to the filing of the civil suit against trustees of the fund and Morris Shenker?

Mr. KANE. Well, sir, we had received information stating that the money of this fund was being misused by Mr. Shenker. At that time I and two or three of my staff accountants and an attorney from the Office of the Solicitor, we investigated and we found that in our opinion that Mr. Shenker was milking, what we would say, milking the fund of its money.

The CHAIRMAN. Well, your limited investigation concluded that Morris Shenker had outstanding obligations to the fund at that time of \$31.5 million. I think you described it as a "milking operation." Is that correct?

Mr. KANE. Yes, sir.

The CHAIRMAN. Now, when you speak about "milking operation," I guess what you are referring to is that the moneys advanced to finance the sales of Shenker properties were actually spent on—let me give you a number of illustrations—the following: one, to buy a building in Las Vegas. Is that correct?

Mr. KANE. Yes, sir.

The CHAIRMAN. To settle a defaulted loan in the amount of \$300,000; is that correct?

Mr. KANE. Yes, sir.

The CHAIRMAN. Purchase of new land, the Sal-la-Sea property; is that correct?

Mr. KANE. That is correct, sir.

The CHAIRMAN. To advance money to a Shenker business partner, among other things; is that correct?

Mr. KANE. Yes, sir.

The CHAIRMAN. Did you have any other outside sources agree with your findings?

Mr. KANE. Yes, sir, I did. If I may, I would like to look at some notes.

The CHAIRMAN. OK.

Mr. KANE. Senator, I have a memo that I had written on March 14, 1977, concerning this. Attached to this memorandum is a statement by Mr. Earl Liever, who was——

The CHAIRMAN. We have all of that in the record, so it is already in the record. Earl Liever was the administrator of the fund, right?

Mr. KANE. Yes, sir.

The CHAIRMAN. He questioned these uses in October of 1975 in that statement?

Mr. KANE. Yes, sir.

The CHAIRMAN. As I understand it, Mr. Liever concluded in a report dated October 20, 1975, reporting to the trustees that a significant amount of money that had been loaned by the trustees to the Sierra Charter Corp. of America had been loaned in turn to other companies owned in whole or in part by Morris Shenker and/or his family. Is that correct?

Mr. KANE. That is correct, sir.

The CHAIRMAN. Now, it is also correct that Mr. Shenker and his family are the sole stockholders or shareholders of the Sierra Charter Co. Is that correct?

Mr. KANE. That is correct, sir.

The CHAIRMAN. I believe you have stated that money loaned to this company was subsequently milked for the benefit of other companies. Is that right?

Mr. KANE. That is correct, sir.

The CHAIRMAN. These other companies that these moneys were milked for were also owned by Mr. Shenker and his family. Is that correct?

Mr. KANE. That is correct, sir.

The CHAIRMAN. The trustees lent money to Shenker to improve a land development company owned by him and his family. But in turn these moneys were milked or otherwise transferred to other companies owned by Mr. Shenker and his family.

Mr. KANE. That is correct, sir.

The CHAIRMAN. As I understand it, the Liever report also stated how much money was milked out of these loans by Shenker as of October 1975. Is that right?

Mr. KANE. Yes, sir. According to his report, Sierra was advanced a sum of \$2,682,891 and this was given to Murrieta Hot Springs and Charter Home Builders, and also the IJK Corp.

The CHAIRMAN. The IJK Corp. What is Mr. Shenker's ownership position in Charter Home Builders and IJK?

Mr. KANE. Mr. Shenker and his family own all the shares of Murrieta Hot Springs, Charter Home Builders, and the IJK Corp.

The CHAIRMAN. Did the Liever report reflect other advances?

Mr. KANE. Yes, sir. It shows that Sierra had advanced other sums to other parties, namely \$108,000 to an attorney, and this advance was made on August 1, 1975.

The CHAIRMAN. Was that John Pilkington?

Mr. KANE. Yes, sir.

The CHAIRMAN. P-i-l-k-i-n-g-t-o-n?

Mr. KANE. Yes, sir.

The CHAIRMAN. OK.

Mr. KANE. There was also \$796,872 to a Mr. Sidney Wyman——

The CHAIRMAN. That is W-y-m-a-n.

Mr. KANE. [continuing]. Who was a business associate of Mr. Shenker. Regarding this loan, there was no note to show that this was made.

The CHAIRMAN. Almost \$1 million of these pension funds were given to Sidney Wyman. There was not even a note, and that had no relationship to the purpose of the trustees' loan to begin with.

Mr. KANE. That is correct, sir.

The CHAIRMAN. Go ahead.

Mr. KANE. Also there was \$59,441 which was given to a company by the name of Sports Arenas for insurance premiums, and Mr. Shenker is the controlling stockholder of Sports Arenas. There was also \$111,400 to a Mr. Stan Franklin who was the president of Sierra, and there was also \$121,476 given for an option to purchase 564 acres of land near Lake Tahoe that is owned by Stan Franklin. Mr. Liever stated the loans to Sidney Wyman and Stan Franklin were questionable.

The CHAIRMAN. Were there any other loans or financial transactions of a questionable nature questioned by Mr. Liever's firm?

Mr. KANE. Yes, sir, there were. There were advances made by Sierra to other parties totaling \$3.8 million. Of this amount, \$3.5 million were questionable. There was also a note on a rather involved transaction with Mr. Stan Franklin, the Security National Bank of Nevada, and Swift Construction Co.

The CHAIRMAN. Mr. Kane, Mr. Liever's firm indicated there were numerous transactions involving millions of dollars which were questionable. As I recall he also reported that as of July 7, 1975, the Department of HUD suspended Sierra's sales for several months. Is that correct?

Mr. KANE. Yes, sir.

The CHAIRMAN. Mr. Kane, are you familiar with the name Al Bramlet?

Mr. KANE. Yes, sir, I am. He was a trustee of the pension fund and also the head of Local 226 of the Culinary Workers.

The CHAIRMAN. Do you know what happened to Mr. Bramlet?

Mr. KANE. Yes, sir. He was murdered.

The CHAIRMAN. He was kidnapped and murdered, wasn't he?

Mr. KANE. Yes, sir.

The CHAIRMAN. Was he found in the desert out in Nevada?

Mr. KANE. He was found out in the desert; yes.

The CHAIRMAN. For what reason was he kidnapped and murdered, if you know?

Mr. KANE. Well, from the information that I have, he had ordered a company that was on strike, he wanted to have that bombed, a fire bomb. The person who did it later was not paid and therefore, from the information, the person who did the bombing had actually killed Mr. Bramlet.

The CHAIRMAN. Mr. Bramlet ordered a fire bombing of a restaurant in Las Vegas which was involved in a strike. Apparently he or somebody else refused to pay the arsonists and they apparently took him out and killed him.

Mr. KANE. That is correct, sir.

The CHAIRMAN. Did Mr. Bramlet dominate this fund?

Mr. KANE. Yes, sir. He was very dominant.

The CHAIRMAN. Did he influence the fund to loan the money to Mr. Shenker?

Mr. KANE. That I could not say but I feel he was.

The CHAIRMAN. At the time of Mr. Bramlet's death, were you investigating an allegation that Mr. Shenker had paid Mr. Bramlet a \$10,000 bribe to get the loan?

Mr. KANE. No, sir. We were not investigating that but I do believe it was the U.S. Department of Justice that was involved in that.

The CHAIRMAN. OK. We will put what we call Kane document No. 3 into the record, without objection. In fact, all documents will be put into the record without objection.

[The material referred to follows:]

LABOR-MANAGEMENT SERVICES ADMINISTRATION

WASHINGTON, D.C. 20510

Date: 4 March 1977
 Reply to: Thomas F. Kane, Chief
 Branch of Reporting Enforcement
 Subject: Southern Nevada Culinary and Bartenders
 Pension Trust Fund
 Las Vegas, Nevada
 To: Case No. 72-6118
 To: Edward F. Daly, Assistant Director
 Division of Enforcement

Shenker

Slattery

Kane Document #3

The writer has had several telephone discussions with Dave Slattery, attorney with the U.S. Department of Justice, concerning the subject fund and the disappearance of Al Bramlet. Slattery advised the writer on March 1, 1977, that the FBI has entered the Bramlet matter. It was agreed that DOL would review the books and records of the fund and would not conduct any interviews without clearance from the Department of Justice. It was also agreed that this investigation would be coordinated with the LMSE investigation into the Hotel and Restaurant International Union.

In a cursory review by the writer of the events that have occurred to date, the writer has the following observations:

1. Regarding the disappearance of Al Bramlet - why would the Dunes Hotel executive, allegedly Sidney Wyman, want to pay \$10,000 to a gambling casino for Al Bramlet? This gives some credence to a theory that Bramlet was possibly involved in a "kick-back arrangement" with the Dunes Hotel since it is owned by Shenker, and Shenker received over \$16 million in loans from the captioned fund which was dominated by Bramlet.

2. Attorney I. R. Ashleman II of the firm Ashleman and Sabbath, represents the Southern Nevada Culinary Fund. Ashleman is also allegedly the attorney for Local 226 Culinary Workers.

In Exhibit 3 - memorandum dated 12/7/76 to Donald O'Leary from Kenneth L. Unruh re: breakdown of Sierra Charter Corp. - there is a listing of the Board of Directors of the following corporations:

Comstock Pipeline (formerly known as Sierra Pipeline)
 Swift Construction
 Charter Home Builders
 Seaview Village, Inc.

The Board of Directors listed are:

Morris A. Shenker, Chairman of the Board
 I. R. Ashleman II, Director
 Kenneth L. Unruh, Director
 John H. Pilkington, Director
 Wolfgang Schanda, Director

CO Birnbaum, in his contacts with Attorney Ashleman, was advised that there is no actual commitment to loan additional funds to Shenker. In further pursuit of this, Ashleman stated to Birnbaum that the fund is making loans to Shenker to keep him "afloat" until there is a settlement of their financial matters with Shenker. Ashleman further stated that there were no definite monthly figures given to Shenker but stated that a "ball park figure" for the amount of money loaned to Shenker would be \$1.2 million.

In Exhibit 7(d) - memorandum of points to be considered in the Sierra Charter - pension fund loan protocol - there appears to be a draft of a loan commitment which was not completed or signed.

Information from a reliable source indicates that there is a signed loan commitment to advance further loans to Shenker totaling \$16.6 million. Further information was received that the fund's attorney, name not disclosed, advised all fund trustees that the legal document with Shenker is binding and that they must continue paying money to Shenker until September 1978, when the amount should total \$16.6 million.

This places doubt in the writer's mind concerning Ashleman. Ashleman may be playing "both sides of the street" with the fund's money. Yet he could also have been placed on the Board of Directors of the Shenker corporations in order to protect the loans made by the fund to Shenker.

It is the opinion of the writer that all contacts with Attorney Ashleman should be at arm's length and as minimal as possible.

PWBP:TFKane/dkt

The CHAIRMAN. Let me just refer to one section of that, although the whole document is interesting. This is a document dated March 4, 1977. A reply to Thomas F. Kane, Chief of the Branch of Reporting Enforcement. Subject: Southern Nevada Culinary & Bartenders pension trust fund, Las Vegas, Nev., Case No. 72-6118, to Edward F. Daly, Assistant Director, Division of Enforcement, U.S. Department of Labor.

It says here:

Regarding the disappearance of Al Bramlet, why would the Dunes Hotel executive, allegedly Sidney Wyman, want to pay \$10,000 to a gambling casino for Al Bramlet? This gives some credence to a theory that Bramlet was possibly involved in a "kickback arrangement" with the Dunes Hotel since it is owned by Shenker, and Shenker received over \$16 million in loans from the captioned fund which was dominated by Bramlet.

What kind of action did you recommend against Mr. Shenker as a result of the milking operation you discovered?

Mr. KANE. Sir, myself and the rest of the people in the office of enforcement, we wanted to go after Shenker by giving him back all of the land and going after his personal guarantees of the loans.

The CHAIRMAN. Did you believe you had any leverage in doing so?

Mr. KANE. Yes, sir, we did. We felt that if we went after him and the courts backed us up in saying that he had to give the money back, we felt that he would have to come up with the money or else he would go into bankruptcy.

The CHAIRMAN. Into bankruptcy? Would bankruptcy have had an effect on his gambling license?

Mr. KANE. Well, not by law but if he went into bankruptcy—

The CHAIRMAN. In other words, not by statute.

Mr. KANE [continuing]. He would not be able to pay any money for his taxes and therefore he would probably lose his gambling license.

The CHAIRMAN. There was no statute that would require a bankrupt to lose its license. But by going into bankruptcy he would have been placed in a tenuous situation that would have included his eventual inability to pay taxes, to pay the gambling taxes, and this of course would have resulted in cancellation of his license.

Mr. KANE. That is correct, sir.

The CHAIRMAN. What did the Department of Labor say about this theory; that is, if you had just called the notes; simply called the notes?

Mr. KANE. That is right. Well, sir, I have another memo that was written by Ed Daly regarding a meeting we had. This is dated July 13, 1978. It was regarding my statement that we should go after Shenker on his personal guarantees.

The CHAIRMAN. Please identify that document.

Mr. KANE. This is marked "Kane document No. 5." It is dated July 13, 1978. It was written by Edward F. Daly, the director, office of enforcement, and it is in the files.

This is regarding a meeting of July 13 regarding the Southern Nevada Culinary and Bartenders Pension Trust. The people attending were Jack Ballard, Ian Lanoff, Monica Gallagher, Judy Burghardt, T. F. Kane, and E. F. Daly.

One, "The meeting was called to discuss T. F. Kane's memo of July 12, 1978." This was the memo in which I had put forward my opinion.

Two, "Ian asked for T. F. Kane's recommendation. T. F. Kane said we should move against Shenker on his personal guarantees. Monica said that Shenker's assets are all pledged and moving against him would be unproductive."

Three, "The discussion centered around how DOL could answer anticipated arguments that the fund was merely trying to preserve poor past investments through contributing additional funds to the project."

The CHAIRMAN. Let me just interrupt you there. Were, in fact, Mr. Shenker's assets all pledged?

Mr. KANE. Sir, at this meeting I had shown to the people a copy of a statement of assets and liabilities of Mr. Shenker that was dated December 31, 1975. It showed—

The CHAIRMAN. That is Kane document No. 4. We will put Kane documents Nos. 4 and 5 into the record at this point, without objection.

[The material follows:]

MORRIS A. SHENKER
STATEMENT OF ASSETS AND LIABILITIES
DECEMBER 31, 1976
(Unaudited)

Kane Dec. #4

ASSETS

	Cost Basis	Estimated Value Basis
Cash (Note 1)	\$ 68,000	\$ 68,000
Escrow deposits	3,900	3,900
Cash surrender value of life insurance (Note 2)	-	-
Interest receivable	424,300	424,300
Notes and loans receivable (Note 3)	1,937,100	1,937,100
Mortgages receivable (B.A.L., Inc., 2nd)	1,328,200	1,328,200
Stocks and bonds of publicly held corporations (Note 4)	3,882,600	10,765,700
Net assets of Morris A. Shenker, Law Offices	303,100	303,100
Investment in net assets of partnerships (Note 5)	(1,400,900)	8,210,600
Investment in net assets of privately held corporations (Note 6)	303,500	577,800
Investment in net assets of wholly-owned corporations (Note 7)	841,800	29,941,300
Investment in real estate (Note 8)	2,467,000	9,791,100
Oil (Note 9)	121,700	1,442,300
Intangible (Note 10)	-	650,000
Residence	431,200	431,200
TOTAL ASSETS	10,711,500	65,874,600

LIABILITIES

Accounts payable and accrued expenses	219,200	219,200
Accrued interest other than to banks	332,600	332,600
Due stock brokers - margin accounts	130,100	130,100
Notes and loans payable other (Note 11)	4,384,900	4,384,900
Notes payable banks including accrued interest of \$55,600 (Note 12)	3,373,400	3,373,400
Mortgages payable (Note 13)	1,210,900	1,210,900
Accrued income taxes payable, net of prepayments (Note 14)	350,300	350,300
Estimated income taxes on unrealized asset appreciation - (Note 15)	-	22,000,000
Contingencies (Note 16)	-	-
TOTAL LIABILITIES	10,001,400	32,001,400
EXCESS OF ASSETS OVER LIABILITIES	\$ 710,100	\$33,873,200

The accompanying notes are an integral part of this statement.

MORRIS A. SHENKER

STATEMENT OF ASSETS AND LIABILITIES

DECEMBER 31, 1975
(Unaudited)

MAIXNER, MAIXNER & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS

ALBERT A. MAIXNER, CPA
ALBERT E. MAIXNER, CPA

404 CHESTNUT BANK BLDG. 9790 HIGHWAY 200 - TELEPHONE 310-040-040
SAINT LOUIS, MISSOURI 63128

Morris A. Shenker, Esq.
St. Louis, Missouri

The accompanying Statement of Assets and Liabilities as of December 31, 1975 was not audited by us. We, therefore, do not express an opinion on the Statement of Assets and Liabilities, nor do we express an opinion on the amounts shown as estimated values contained therein.

Maixner, Maixner & Company
Maixner, Maixner & Company

October 27, 1976

St. Louis, Missouri

MORRIS A. SHENKER
STATEMENT OF ASSETS AND LIABILITIES
DECEMBER 31, 1975
(Unaudited)

ASSETS		
	Cost Basis	Estimated Value Basis
Cash (Note 1)	\$ 64,700	\$ 64,700
Escrow deposits	4,000	4,000
Cash surrender value of life insurance (Note 2)	-	-
Interest receivable	46,800	46,800
Notes and loans receivable (Note 3)	1,752,200	1,752,200
Mortgages receivable (Note 4)	1,546,500	1,546,500
Stocks and bonds of publicly held corporations (Note 5)	2,760,000	4,847,800
Net assets of Morris A. Shenker, Law Offices	289,400	289,400
Investment in net assets of partnerships (Note 6)	(1,318,700)	4,823,700
Investment in net assets of privately held corporations (Note 7)	347,100	1,119,700
Investment in net assets of wholly-owned corporations (Note 8)	841,800	17,071,100
Investment in real estate (Note 9)	2,467,000	9,550,700
Oil (Note 10)	81,700	670,100
Residence	431,200	431,200
TOTAL ASSETS	9,313,700	42,217,900
LIABILITIES		
Accounts payable and accrued expenses	135,700	135,700
Accrued interest other than to banks	138,100	138,100
Due stock brokers - margin accounts	122,700	122,700
Notes and loans payable other (Note 11)	2,782,100	2,782,100
Notes payable banks including accrued interest of \$112,200 (Note 12)	3,284,500	3,284,500
Mortgages payable (Note 13)	1,372,100	1,372,100
Contingencies (Note 16)	-	-
Accrued income taxes payable, net of prepayments (Note 14)	19,400	19,400
Estimated income taxes on unrealized asset appreciation - (Note 15)	-	11,000,000
TOTAL LIABILITIES	7,854,600	18,854,600
EXCESS OF ASSETS OVER LIABILITIES	\$1,459,100	\$23,363,300

The accompanying notes are an integral part of this statement.

MORRIS A. SPANER
NOTES TO STATEMENT OF ASSETS AND LIABILITIES
DECEMBER 31, 1975
(Unaudited)

Note 1 CASH

Cash represents balances in two interest-bearing savings accounts at Valley Bank of Nevada to guarantee interest on certain liabilities of the estate of Irvin J. Kahn.

Note 2 CASH SURRENDER VALUE OF LIFE INSURANCE

There is no cash value on a life insurance policy (face amount \$250,000), determined as follows:

Cash value	\$66,250
Policy loan	66,250
	<u>\$ -0-</u>

Note 3 NOTES AND LOANS RECEIVABLE

NOTES

B & W Piping, Inc.	\$ 83,500	
Chase Hotel, Inc.	110,000	
Gryder Motor Co.	73,300	
Sierra Charter Corporation	558,800	
Thermo-Dyns, Inc.	60,900	\$ 886,500

LOANS

American Cinerama Corp.	900	
Irving Gack	3,000	
Thomas Gullfoil	13,400	
Hannibal Loans & Investments	21,600	
Hannibal Motors, Inc.	10,800	
Pajoe Building Corporation	26,800	
Shenker, Ludwig & Co.	15,000	
Sam Weintraub	57,000	
James L. Zelman	600	
Computer Microdata	12,500	
Electronics Capital Building	137,000	
K Development	198,800	
Missouri Cinema Corp.	76,000	
Murrieta Hot Springs	120,000	
Professional Investors of Iowa	38,100	
Mary Ellen Sadler Schmidt	84,200	
Sidney Wyman	50,000	865,700
		<u>\$1,752,200</u>

MORRIS A. SHENKER
NOTES TO STATEMENT OF ASSETS AND LIABILITIES
DECEMBER 31, 1975
(Unaudited)

Note 4 MORTGAGES RECEIVABLE

B.A.I., Inc. (2nd)	\$1,328,200
Pardee Construction (1st)	<u>218,300</u>
	<u>\$1,546,500</u>

Note 5 STOCKS AND BONDS OF PUBLICLY HELD CORPORATIONS

Except for common shares of Continental Connector Corporation current values for investments in securities of publicly held companies were computed by using closing quotations for securities listed on the New York Stock Exchange and on the American Stock Exchange and by using bid-price for over-the-counter issues at December 31, 1975. Where no prices were available from financial publications, current values were computed from information furnished by a St. Louis brokerage firm.

Included in the bases are the following:

	<u># Shares</u>	<u>Cost Basis</u>	<u>Estimated Value Basis</u>
Continental Connector Corporation (see Note 8 (3))	62,548	\$1,088,400	\$3,039,800
Valley Industries, Inc. (restricted as to sale until October, 1977)	20,000	<u>100,000</u>	<u>275,000</u>
		<u>\$1,188,400</u>	<u>\$3,314,800</u>

Not included are shares of Sports Arenas, Inc., representing approximately 80% outstanding shares, with a cost basis of approximately \$212,000. Form 10K filed with the Securities and Exchange Commission on July 31, 1976, for the year ended April 30, 1976 reports shareholders' equity of \$373,800. These were omitted as no market was indicated.

MORRIS A. SHENKER
NOTES TO STATEMENT OF ASSETS AND LIABILITIES
DECEMBER 31, 1975
(Unaudited)

Note 6
INVESTMENT IN NET ASSETS
OF PARTNERSHIPS

	Date of Financial Information	Capital (Investment)	% of Income Participation	Capital Returned	Partnership Account
Berkley House Ltd.	12/31/75	(2,843,000)	12.00	(200,000)	100,000
Clayton Center	12/31/75	(283,300)	50.00	(132,300)	273,500
Electronics Capitol Building	12/31/75	(1,830,000)	22.50	(411,300)	917,200
Gilroy-Sims & Associates Ltd.	12/31/75	(264,400)	10.00	(30,600)	-
Harold Koplar and Associates	12/31/75	(617,000)	50.00	(600,000)	1,593,000
Loma Palisades	12/31/75	102,400	45.00	27,700	1,844,400
Metropolitan Fund Co. (1974)	12/31/75	-	.171379	(9,302)	-
					\$4,823,702

1) From tax returns prepared by independent certified public accountants except Urban Improvement Fund on which no information is available.

2) Based on an offer to buy for approximately \$3,000,000 net. Sales contract dated September 1, 1976.

3) Based on estimates determined by management.

4) Based on a real estate purchase contract for \$7,500,000 dated March 23, 1976 which was refused. An offer for \$8,000,000 dated January 30, 1976 was also refused.

5) Based on an adjustment for deferred income of approximately \$800,000 and on an adjustment of land of approximately \$3,200,000 based on an appraisal by W. Dallas Addison, MAI, SFRPA, dated August 20, 1974.

Acme Software Corporation	12/31/75	\$ 533,000(1)	1.38	100,000	0,000
Chase Hotel, Inc.	9/30/75	533,000(1)	2.13	43,000	11,400
Computer Microdata				25,000	(8)
D F & Associates				100	5,000
K Development Co.	5/31/75	206,300(2)	2.50	800	105,300(7)
Gil-Sims Construction, Inc.	12/31/75	420,100(1)	25.00	500	500
Meehanite Metals Corp.	3/31/75	4,400(2)	12.50	5,000	220,000
Pajoc Building Corporation	9/30/75	8,779,400(2)	2.50	400	42,400(5)(7)
York Garage Company	12/31/75	138,500(1)	44.40	41,700	149,000
Sierra Charter Corporation	12/31/75	447,000(1)	33.33	18,900	491,800(6)(7)
220 N. Kingshighway Corp.	4/30/75	(4,016,500)(2)	50.00	46,700	87,300
	12/31/75	3,879,000(1)	1.67		
				\$ 347,100	\$ 1,119,700

- 1) From Internally prepared unaudited statements.
- 2) From financial statements or tax returns audited or prepared by Independent certified public accountants.
- 3) Stated at original cost as opposed to equity except for Gil-Sims Construction, Inc. Sub. S Corporation.
- 4) Based on recognition of deferred income.
- 5) Based on reduction of securities to market.
- 6) Based on appraisal of partially improved lots by Research Investment Company (William S. Hart Jr. SREA) dated September 6, 1976.
- 7) Members of Mr. Shenker's family also have interests as follows:

K Development Co.	75%
Pajoc Building Corporation	11%
Sierra Charter Corporation	50%
- 8) No information currently available.

MORRIS A. SHENKER
NOTES TO STATEMENT OF ASSETS AND LIABILITIES
DECEMBER 31, 1975
(Unaudited)

Note 8
INVESTMENT IN NET ASSETS
OF WHOLLY-OWNED CORPORATIONS

	Date of Financial Information(1)	Capital (Deficiency)	Cost(2)	Estimated Current Value
B. A. I., Inc.	9/30/75	\$ (455,800)	\$ 250,900	\$ - (5)
I. J. K. Nevada, Inc.	9/30/75	(3,032,100)	534,600	17,071,100(3)
Murrieta Hot Springs, Inc.	9/30/75	(19,143,600)	56,300	-- (5)
S & F Corporation	-	-	-	- (4)
			<u>\$ 841,800</u>	<u>\$ 17,071,100</u>

- 1) From internally prepared unaudited statements.
- 2) Stated at original cost as opposed to equity
- 3) Estimated current value reflects an adjustment (approximately \$20,000,000 net of estimated income taxes of \$8,200,000) by management, to investment in Continental Connector Corporation common stock giving consideration to an appraisal of the Dunes Hotel by the Property Valuation Division of Stan Krolak Industries, Inc. dated March 4, 1976. The appraisal assumes the completion of a proposed expansion of the Dunes Hotel, a wholly-owned subsidiary of Continental Connector Corporation.
- 4) S & F Corporation began active operations on March 27, 1975 and at March 31, 1976 (end of its first fiscal year) had no shareholders' equity on financial statements audited by independent certified public accountants. Mr. Shenker was a subscriber for two shares of common stock at \$100 per share. Mr. Shenker's family had subscribed to an additional six shares of common stock. In 1976 ten shares of common stock were issued, 2-1/2 shares to Mr. Shenker and 7-1/2 shares to his family. The financial statements audited by independent certified public accountants for the year ending March 31, 1976 show a capital deficiency of \$785,300.
- 5) Inadequate information is available at December 31, 1975 to determine estimated current value.
- 6) Prior to 1974 Mr. Shenker had a fifty percent interest in the companies and acquired the remaining fifty percent interest during 1974 from the estate of Irvin J. Kahn.

MORRIS A. SHENKER
NOTES TO STATEMENT OF ASSETS AND LIABILITIES
DECEMBER 31, 1975
(Unaudited)

Note 9 INVESTMENTS IN REAL ESTATE

	Acres	Estimated Value Per Acre	Cost	Estimated Current Value
Unimproved land, San Diego	2.4	\$ -	\$ 12,500	\$ 110,000
Pinkel Mahon & Keller	8.75+	-	30,200	85,000
Encinal Garino	2,127.	2,500	1,368,400	5,317,500
Hoffman	20.	8,500	70,100	170,000
Long	260.	7,000	128,500	1,820,000
Mira Mesa T.I.T.	117.75	8,500	222,000	1,000,900
Palm Springs	9.43	75,000	495,100	707,300
Reed	40.	8,500	<u>140,200</u>	<u>340,000</u>
			<u>\$2,467,000</u>	<u>\$9,550,700</u>

- (1) February 5, 1974 appraisal as of December 31, 1973 by Charles P. Semple MAI, SRPA
- (2) Based on release conditions in trust deed.
- (3) Based on offers made in 1970 which were refused.
- (4) Based on 1975 Real estate tax bill.
- (5) Estimates furnished by Mr. Shenker.

Note 10 OIL

Cost basis of oil investments is composed of	
Oil well equipment (net of depreciation \$55,700)	\$30,800
Lease acquisition costs	<u>50,900</u>
	<u>\$81,700</u>

Estimated current value is based on values determined as of December 31, 1974 by a business associate. No current estimate is available.

MORRIS A. SHENKER
NOTES TO STATEMENT OF ASSETS AND LIABILITIES
DECEMBER 31, 1975
(Unaudited)

Note 11 NOTES AND LOANS PAYABLE OTHER

NOTES

Selma Enoch *	\$257,900	
Estate of Nathaniel H. Winkelmann	59,700	
Harvey L. Silbert	47,000	
I.J.K. Nevada, Inc.	842,300	
Joe Simpkins *	<u>447,600</u>	\$1,654,500

LOANS

Stanley Ira Franklin	350,000	
Gilroy Simms & Associates	31,300	
Illinois Cinema Corp.	4,000	
Sorkis Webbe	245,000	
Joseph Friedman	25,000	
S & F Corporation	397,300	
Charter Home Builders	<u>75,000</u>	1,127,600
		<u>\$2,782,100</u>

Note 12 NOTES PAYABLE BANKS **

	Principal	Accrued Interest
American National Bank	\$ 567,400	\$ 10,000
Bank of St. Louis	58,300	1,300
Citizens Bank of University City	86,100	1,100
First State Bank & Trust Co.	407,300	6,300
First National Bank in St. Louis	426,000	5,800
Mercantile Commerce Trust Co.	6,000	100
Missouri State Bank & Trust	146,000	1,200
North County Bank & Trust	16,100	100
Valley Bank of Nevada	<u>1,459,100</u>	<u>86,300</u>
	<u>\$3,172,300</u>	<u>\$112,200</u>

* Secured by corporate securities

** Secured by corporate securities and land.

MORRIS A. SHENKER
NOTES TO STATEMENT OF ASSETS AND LIABILITIES
DECEMBER 31, 1975
(Unaudited)

Note 13 MORTGAGES PAYABLE

<u>Mortgagee</u>	<u>Property</u>	
American National Insurance Co.	Encinal Garino	\$ 678,500
Mr. George Pinkel	Pinkel, Mahon & Keller	27,300
Title Insurance & Trust	Hoffman	29,500
California First Bank	Cecil Long	30,600
Title Insurance & Trust	Mira Mesa	132,200
Atlantic Savings & Loan	Palm Springs	411,000
Title Insurance & Trust	Reed	63,000
		<u>\$1,372,100</u>

Note 14 ACCRUED INCOME TAXES

Accrued income taxes is the balance owing for the calendar year 1975. The Internal Revenue Service has examined the income tax returns for the years 1963 through 1969. Mr. Shenker's office is of the opinion that the additional taxes, penalties and interest that may ultimately be paid will be nominal. The years 1970 through 1972 are currently being examined. No provision has been made in these statements for the years 1963 through 1972.

Note 15 ESTIMATED INCOME TAXES

Unrealized appreciation in the value of assets would, if realized, normally require payment of taxes at capital gain rates. Estimated income taxes on unrealized asset appreciation have been calculated at the maximum capital gains rate plus minimum tax on preference items.

Note 16 CONTINGENCIES

Mr. Shenker is guarantor of approximately \$44,000,000 of obligations of wholly-owned corporations or partnerships in which he has an interest. Of this amount approximately \$14,000,000 relates to an obligation of I J K Nevada, Inc. and is collateralized with the company's investment in 209,800 common shares of Continental Connector Corporation carried on its books at approximately \$14,000,000. Additionally, Mr. Shenker is a guarantor with others of approximately \$5,000,000 relating to wholly-owned corporations of which amount \$3,800,000 relates to a performance bond for a contractor in default on work to be completed.

MORRIS A. SHENKER
NOTES TO STATEMENT OF ASSETS AND LIABILITIES
DECEMBER 31, 1975
(Unaudited)

Note 16 CONTINGENCIES cont'd.

Mr. Shenker, among others, has been named in two suits filed by stockholders of Continental Connector Corporation. An answer has been filed, denying the essential allegations in the suit pending in the Circuit Court of Cook County, Illinois. It is unclear at this time whether Mr. Shenker has been served in the suit more recently filed in the Supreme Court of the State of New York for the County of Queens. Mr. Shenker's office is unable to determine the probable outcome of the foregoing litigation.

SUPPLEMENTAL INFORMATION

Murrieta Hot Springs, Sierra Charter Corporation of Nevada, and S & F Corporation recognize profit on real estate in compliance with the criteria for recognition as sales under the American Institute of Certified Public Accountants' Industry Audit Guide.

The reports of independent certified public accountants for all wholly-owned corporation and Sierra Charter state that the ability to continue as going concerns is dependent on obtaining additional capital and/or financing and achieving substantially improved operating results.

July 13, 1978

Edward F. Daly, Director
Office of Enforcement

July 13 Meeting re
Southern Nevada Culinary and Bartenders
Pension Trust, Las Vegas, Nevada
File 72-6118

The Files

Monica
Kane
Daly
Shenker
Kane Document
5

Attendees: Ian Lanoff, J.V. Ballard, Monica Gallagher, Judy Burghardt, T.F. Kane, E.F. Daly.

1. The meeting was called to discuss T.F. Kane's memo of July 12, 1978.
 2. Ian asked for T.F. Kane's recommendations. T.F. Kane said we should move against Shenker on his personal guarantees. Monica said that Shenker's assets are all pledged and moving against him would be unproductive.
 3. The discussion centered around how DOL could answer anticipated arguments that the fund was merely trying to preserve poor past investments through contributed additional funds to the project.
 4. Goldberg indicated that we have a "deep pocket" in that NAB is a fiduciary. When the discussion considered getting additional information from the bank and other sources, Goldberg suggested that we are better off without additional information.
 5. J.V. Ballard suggested that Ian would be in a difficult position answering to a Congressional committee in view of Shenker's involvement and our failure to do anything. J.V. Ballard suggested some action. The Solicitor's people thought we would have difficulty making a case under the "prudence requirements." Ian considered the possibility of getting it back to the court someday but Monica didn't think we could do so.
 6. Ian suggested that we have two options - (1) toughen up reporting requirements or (2) get a real estate expert to look at the two most recent transactions. OE will attempt to get a real estate expert.
- Ian considered the possibility of interviewing M. Paul Heck. Judy Burghardt advised that Attorney Hoffman is bringing in information on Heck next week and at that time if we do not have enough information, we may have to interview.

The CHAIRMAN. I think the document says 1976 rather than 1975, though, doesn't it?

Mr. KANE. There was one for 1975 and one for 1976.

The CHAIRMAN. Well, then, we will put your documents in and include that 1975 document as well.

Mr. KANE. Well, there is one for 1975 attached to the 1976.

The CHAIRMAN. OK. All right.

Mr. KANE. On the statement of assets and liabilities for 1975, it showed that Mr. Shenker had a net worth of over \$23 million, and in the statement of assets and liabilities for December 31, 1976 it showed he had a net worth of over \$33 million. To me, it showed that his net worth during that 1 year had increased \$10 million. Now whether these assets were all under liens, I could not say.

The CHAIRMAN. Let me go back to your statement and let me just read this through for you. You follow with me and see if I am reading it correctly.

No. 3, "The discussion centered around how DOL could answer anticipated arguments that the fund was merely trying to preserve poor past investments through contributed additional funds to the project." That is what three says, isn't it?

Mr. KANE. Yes, sir.

The CHAIRMAN. Four, "Goldberg indicated that we have a 'deep pocket' in that UAB"—now that is Upper Avenue Bank, I take it—

Mr. KANE. That is correct, sir.

The CHAIRMAN [continuing]. "Is a fiduciary. When the discussion considered getting additional information from the bank and other sources, Goldberg suggested that we are better off without additional information."

Mr. KANE. That is correct, sir.

The CHAIRMAN. That is kind of interesting, isn't it? Was that interesting to you at the time?

Mr. KANE. Yes, sir, it was.

The CHAIRMAN. No. 5, "J. V. Ballard suggested that Ian would be in a difficult position answering to a congressional committee in view of Shenker's involvement and our failure to do anything." That is correct, isn't it?

Mr. KANE. That is correct, sir.

The CHAIRMAN. "J. V. Ballard suggested some action. The solicitor's people thought we would have difficulty making a case under the 'prudency requirements.'" Did you think you would have any difficulty under the "prudency requirements"?

Mr. KANE. No, sir.

The CHAIRMAN. "Ian considered the possibility of getting it back to the court some way but Monica didn't think we could do so." This is accurate?

Mr. KANE. Yes, sir.

The CHAIRMAN. Six, "Ian suggested that we have two options: one, toughen up reporting requirements or, two, get a real estate expert to look at the two most recent transactions. OE will attempt to get a real estate expert."

"Ian considered the possibility of interviewing M. Paul Heck. Judy Burghardt advised that attorney Hoffman is bringing in information on Heck next week and at that time, if we do not have

enough information, we may have to interview." That is all correct?

Mr. KANE. That is correct, sir.

The CHAIRMAN. Now as I understand it, the only official with clout at that meeting in the sense of making ultimate decisions was Ms. Monica Gallagher. Is that correct?

Mr. KANE. That is correct, in my opinion.

The CHAIRMAN. She was the associate solicitor. She did not buy your theory that you should call the notes, bring pressure, force him into bankruptcy if you had to, and by that means he would have to pay it off.

Mr. KANE. That is correct, sir.

The CHAIRMAN. Mr. Lanhoff, as I understand it, was the administrator., Right?

Mr. KANE. That is correct, sir.

The CHAIRMAN. However, she did not want to do that.

Mr. KANE. That is correct, sir.

The CHAIRMAN. He bent to her will, in other words, he went along with her.

Mr. KANE. As far as I was concerned, yes, sir.

The CHAIRMAN. Now as I understand it, Ms. Gallagher, in response to your proposal that you force Shenker to pay back the money, said that all of his assets were pledged; that moving against them would be unproductive.

Mr. KANE. That is correct, sir.

The CHAIRMAN. You have indicated you are not sure whether or not they were pledged because the 1975 financial statement indicated \$23 million, and in 1976, \$33 million in net assets, and that they had increased by \$10 million in 1 year. Is that correct?

Mr. KANE. That is correct, sir.

The CHAIRMAN. That did not include the rest of his family, did it?

Mr. KANE. No, sir, it did not.

The CHAIRMAN. It was not just Shenker in these things. It was Shenker and his whole family.

Mr. KANE. That is correct, sir.

The CHAIRMAN. I presume that you also presumed that the family had a lot of money as well.

Mr. KANE. Yes, sir, I did.

The CHAIRMAN. Did you tell Ms. Gallagher that?

Mr. KANE. Yes, sir, I did.

The CHAIRMAN. As I understand it, she refused to look at these other figures.

Mr. KANE. That is correct, sir.

The CHAIRMAN. Therefore, your action plan was in fact rejected.

Mr. KANE. That is correct, sir.

The CHAIRMAN. Now this happened on July 13, 1978. Isn't that correct?

Mr. KANE. That is correct, sir.

The CHAIRMAN. What did she say to you at that time?

Mr. KANE. Well, at this meeting she just would not go along with what I wanted to do. At that I just said, "Well, that is fine." However—

The CHAIRMAN. Did she say anything else to you?

Mr. KANE. Not at this meeting. Apparently at two other meetings that I have had with Ms. Gallagher we did not get along too well. One time I was there with about five other people and we were presenting our method that we were going to investigate in one other case. At that time we, not only myself but the other people who were with me, we actually shouted at each other and we were told, "Look, let's break it up and get out."

One other time she was quite, quite mad at me. I don't know how to say this but—

The CHAIRMAN. Well, just say what she said. Was it on this case?

Mr. KANE [continuing]. If you will excuse my French, we were talking about this case and again I was pushing my point regarding going after Shenker and also something else, and she said, "Kane, you just piss me off." Excuse my French, but with that I just got quite upset. On the way out I was talking to Ed Daly, who was at this meeting, and I said, "Ed, what happened? What did I do?" He said, "Well, it is just like she does not go along with what you are trying to push."

The CHAIRMAN. Well, did they lay out any alternatives to your strategy on how to get these workers protected?

Mr. KANE. As far as I know, no, sir.

The CHAIRMAN. I think Mr. Lanoff did say to toughen up reporting requirements. But that would not protect the culinary workers.

Mr. KANE. No, sir.

The CHAIRMAN. He said to get a real estate expert to look at the two most recent transactions. But that really did not protect them very much either.

Mr. KANE. No, sir. At that, we in the Office of Enforcement tried to get a person who would be able to look at this real estate but in the meantime, one of the other gentlemen who works for the Department of Labor, Ed Stern, did obtain a person by the name of Ken Marshall. He allegedly had some background in real estate and he was going to review these two transactions.

The CHAIRMAN. As I understand it, he was requested by Mr. Lanoff, Mr. Marshall was requested by Mr. Lanoff to review all the pertinent documents involved, analyze them, and prepare a report on his findings. Is that correct?

Mr. KANE. From what I understand, yes, sir.

The CHAIRMAN. Did he prepare such a report?

Mr. KANE. Yes, sir, he did. He prepared a report and I believe it was dated April 2, 1979.

The CHAIRMAN. OK. Now as I understand it, he reviewed the documents and he gave preliminary oral presentations to representatives of the Solicitor's office and others. Is that right?

Mr. KANE. That is correct, sir.

The CHAIRMAN. Do you remember who some of these people were?

Mr. KANE. I was not at these meetings but I have been told by Ed Daly, who at that time was my boss, that he attended the meeting, Ms. Gallagher attending the meeting, Ian Lanoff, Ed Stern, and Ken Marshall.

The CHAIRMAN. Jack Ballard?

Mr. KANE. Jack Ballard was also at the meeting.

The CHAIRMAN. OK. As I understand it, he did submit a written report.

Mr. KANE. Yes, sir, he did.

The CHAIRMAN. That is exhibit No. 6 here of the Kane documents. We will place that document in the record at this point, without objection.

[The material referred to follows:]

Kone Document
6

APR 2 1975

MEMORANDUM FOR:

J. VERNON BELLAND

Deputy Administrator, F.

FROM:

KENNETH J. MURPHY

Re:

Southern Nevada Culinary Workers and
Bartenders Pension Trust

I have been asked to provide a written report setting forth our findings with respect to my analysis of the Culinary Workers Pension Trust. The attached report represents the latest draft of the analysis to date. The conclusions are basically identical to those which were presented at various staff meetings from September of last year through January of this year. I have reviewed all the relevant documents and reports once again to be sure that nothing has been overlooked. Since those initial staff meetings a number of events were to have occurred, including the execution by the Pension Trust of certain contracts to implement the Asset Management Plan. I assume that these events have occurred and that as a result many of the issues raised by this report are resolved. If you would like amplification of any particular aspects of the report I will be glad to do so.

Please note that this analysis and report have been prepared in conjunction with my assignment by Ian Lanoff to a task force specifically to examine this matter and bears no relationship to my position in the Office of Fiduciary Standards or its predecessor organization in the Office of Regulatory Standards and Exceptions.

Attachment

SOUTHERN CANADA CULINARY WORLD IS AND PARTNERS PENSION TRUST

This report consists of:

1. Questions Presented
2. Introduction and Background
3. Analysis and Conclusions
4. Exhibits
 - (A) Reporting Requirements
 - (B) Financial Analysis of Seaview Village/Sal-La-Sea
 - (C) Memorandum Summarizing Analysis of Gardnerville Properties
 - (D) Index of Materials

Ken Marshall
Ken Marshall

QUESTIONS

- (1) Whether the Investment Manager, the Upper Avenue Bank of Chicago, Illinois has satisfied the reporting requirements of the exemption.
- (2) Whether the Investment Manager has complied with the guidelines for prudent investment outlined in the Asset Management Plan and the general prudent requirement of ERISA.

INTRODUCTION AND BACKGROUND

Any analysis of the questions presented must begin with a discussion of the selection of the Investment Manager and of the Investment Manager's plan to manage the real estate assets of the Southern Nevada Culinary Workers and Bartenders Pension Trust ("the Pension Trust"). The purpose of this report is to analyze the activities of the Investment Manager as reported in the materials listed in Exhibit D to determine whether these activities conform to the Asset Management Plan (the "AMP") and ERISA standards of Prudence and to determine whether these activities have been reported satisfactorily in accordance with the Pension Trust Exemption.

On August 30, 1977, pursuant to the stipulation in the proceedings entitled Marshall et al. v. Schroeder et al., the Upper Avenue Bank of Chicago was appointed Investment Manager of the Pension Trust. The stipulation directed the Investment Manager to (1) take control of all the Pension Trust's real estate-related assets, (deemed to include all loans secured by real estate); and (2) develop an overall plan for the management and/or disposition of the Pension Trust's assets committed to its management.

On March 6, 1978, a proposed asset management plan was submitted by the Upper Avenue Bank as Investment Manager pursuant to the August 30, 1977, stipulation. According to that plan three alternative courses of action were considered by the Investment Manager for management of the assets. First, the Investment Manager could have pursued payment of the delinquent Shaner loans on a long-term basis as apparently had been contemplated when the various loan transactions with the Pension Trust were initiated. A second course of action contemplated a quick liquidation of the loans and the pledged assets for whatever value might be realized in the near term (one year or less).

The Investment Manager selected a third course of action, a program designed to "work-out" the real estate-related loans on a selective asset-by-asset basis. The Investment Manager indicated that this course of action was based on the current actuarial status of the Pension Trust, the condition of the loans and underlying security and the bank's experience in other real estate work-out situations.

This approach sounded plausible. The rationale for this strategy was summarized in dollars and cents at pages 35-36 of the AMP. As indicated the Investment Manager estimated the range of recovery available under an immediate liquidation course of action (alternative #2) as \$4 million to \$5 million before contingent liabilities and indicated that this course of action provided the least degree of protection with respect to the contingent liabilities of the Pension Trust.

'W O R K O U T'

The estimated range of recovery anticipated by the Investment Manager under the recommended work-out program was \$10 million to \$16 million before contingent liabilities. According to the Investment Manager this cushion of action provided such better protection from contingent liabilities, and continuing cooperation from the bondholders and guarantors would have increased the recovery from this estimate.

According to the AMP this overall strategy was to be developed through the following specific guidelines ("Guidelines"):

1. All assets considered available to the recovery program should be protected, consistent with the other guidelines.
2. Additional major Pension Trust investments in real estate should be undertaken, if at all, only when essential, and only when a clear net value to the Pension Trust is a reasonably probable result.
3. Acceptance of assets for the Pension Trust will be undertaken only when the Asset Assumption Checklist has been reviewed by legal counsel, and an appropriate opinion from legal counsel is received by the Investment Manager.
4. Development of real estate requiring financial and physical contributions will be done by others or in joint venture with others.
5. Potential liabilities of the Pension Trust will be deferred to the greatest extent possible and fully defended.
6. Non-real estate assets which may be available to the Pension Trust will be diligently collected.

According to the AMP these Guidelines were to continue to be used during the implementation of the Plan with emphasis on the need, (1), to restrict to a prudent minimum further expenditures of monies from the Pension Trust in aid of the assets or to preserve value that may lie therein, limiting such expenditures to assets in the possession or control of the Pension Trust, and (2) to assure that in any future course adopted, the Investment Manager preserves the Pension Trust's position and remedies with respect to those entities and individuals with whom the loan and guarantee transactions have been made.

The AMP indicated the following additional parameters:

"It is not considered prudent for the Pension Trust to be a "developer" in the sense that it would undertake long-term, highly entrepreneurial risks, and itself invest large, additional sums in the projects."
(AMP at p. 23)

"By M&SA diversification standards, the Pension Trust would reduce its investment in real estate, but investing additional dollars in these real estate assets will not assist in that objective." (the AMP at p. 27)

The AMP continues:

A. The following assets appear to have the largest potential for recovery and will be managed for realization of maximum return achievable without additional investment of Pension Trust resources beyond that which would constitute a prudent risk within the guidelines established by the Investment Manager:

- Murrieta Hot Springs, California (real estate)
- Genoa Fork, Nevada (real estate)
- Units 8 & 9-Tahoe Comstock, Nevada (real estate)

B. The following assets will be protected through appropriate legal action, negotiation, and minimal cash investments in an attempt to bring them to a condition permitting them to be transferred to category A above:

- Land Contracts on Tahoe Comstock, Nevada (real estate)
- Units 6 & 7-Tahoe Comstock, Nevada (real estate)
- Volcano Cliffs, New Mexico (real estate)

C. The following assets will be liquidated as soon as practicable:

- Carson Valley Country Club, Gardnerville, Nevada (common stock)
- Meadow Lakes, New Mexico (real estate)
- Elephant Butte, New Mexico (real estate)
- Home Savings & Loan Association (common stock)
- Capital Reserve Corporation (common stock)
- Morris Shenker (unsecured note)
- IJK of Nevada, Incorporated (unsecured note)

With respect to the Pension Trust's future relationships with Morris Shenker the AMP states:

The cooperative mode of operation (that is the "work-out" of the real estate assets) is based squarely on Shenker's expressed willingness to do all he can to assure that the Pension Trust does not suffer loss on the loans. He has made representations of his intentions to refinance his holdings if possible, to sell other assets to raise cash for loan reductions, and to pledge assets as additional security for the loans and as security for his personal guarantee. The Investment Manager believes that it is in Shenker's best interest to pursue such a course of action. (Continued)

In oral communication, Shenker has agreed to a program of cooperation which is quite specific. Letters of intent are under consideration with him. The Investment Manager presently feels the letters of intent should provide for a transfer to the Pension Trust of certain additional assets; a transfer to an escrow account, subject to the Pension Trust's direction, of assets already pledged or assets promised to be pledged to the Pension Trust; a repayment program on certain notes payable which are assigned to the Pension Trust; a confirmation of guarantees and a collateralization of the guarantee of Shenker; and, in the event of liquidation or transfer of other assets owned by Shenker or affiliated companies, payment to the Pension Trust of a portion of the proceeds. In return, the Investment Manager should consider a reduction of the interest rate on past and future interest to 6% simple interest per annum and an agreement to ~~forego all legal action~~ by the Investment Manager so long as cooperation continues and there remains the reasonable potential for realization of additional recoveries of a substantial nature. The acceptance or non-acceptance by the Investment Manager of this or any other program or terms of cooperation in its entirety will greatly rely upon the value of the additional collateral actually provided by Mr. Shenker to secure his guarantee.

This course of action implies no obligation upon the Pension Trust to become active in the development of real estate.

In the event the cooperative course of action outlined above should collapse, or it should become apparent that achievement of maximum value for the loans made by the Pension Trust is not probable, the Investment Manager would seek to obtain control and ownership of the collateral assets. Accordingly, foreclosures would be undertaken on the various collateral properties and assets and other types of relief would be sought in order to perfect the Pension Trust's interest in, and to gain control of those collateral assets which can be converted by the Investment Manager into value.

If other approaches fail or are exhausted, action will be taken against Sierra, Marieta, Shenker and others to reduce to judgment the amounts not recovered in implementing the Plan, and taking such actions as then may be appropriate to collect on such judgments. The Investment Manager intends to cause such a course of action to be initiated and carried out in a manner that will best serve the interest of the Pension Trust at that time.

It should be noted that total loans to Morris Shenker and Affiliates in default including accrued interest at March 1, 1979, approximate \$35.7 million.

ANALYSIS AND CONCLUSIONS

Compliance with Exemption Reporting Requirement (See exhibit A explanation of various reporting requirements)

The exemption calls for a written report to the workers with in 30 days after each transaction with a party in interest. The report must include a description of each transaction and an explanation of why the transaction is in the interest of the Pension Trust.

The transactions reported pursuant to the exemption primarily involve Morris Shonker and Affiliates who owe the Pension Trust in excess of \$35 million. While the reports explain, in general terms, these transactions they do not provide sufficient information to enable one to judge the appropriateness or advisability of the transactions. In other words, the reports state that the Investment Manager has selected the best course of action and provide some rationale for such actions but do not demonstrate that the selected course of action is superior.

The absence of any analysis of the various alternatives available to Pension Trust prompted several members of the staff to analyze the available raw data (appraisals, title searches, etc.) in an effort to confirm through financial analysis that the selected course of action (the so-called "work-out") was in fact superior and in the best interest of the Pension Trust.

Whereas the Investment Manager estimated the range of recovery as \$10-\$16 million before contingent liabilities (in the AMP), the staff's analysis of the three major groups of properties indicates probable losses of several million dollars and possible losses greatly in excess of that amount. (See exhibits B and C)

Other members of the staff suggested that the Investment Manager may have intended the "work-out" course of action to be an effort to minimize the losses which would occur if either of the other alternative courses of action were selected. This rationale was not expressed in the exemption reports. Quite the contrary. As noted above the Investment Manager estimated that the work-outs would be highly profitable. In summary the following reflects certain observations with respect to the exemption reports:

1. The exemption reports (Investment Manager letters to DOL, August, November and December 1978) do not make clear (they do not even state) the intended or expected outcome of the Sal-La-Sea and Gardnerville deals.
2. The reports, by themselves, do not permit or support an analysis of the possible/probable outcome of the transactions.
3. Analysis of the reports and other materials indicate that losses rather than profits may be expected, contrary to the implications in the reports.
4. If staff analysis is correct the reports omit essential, material information necessary to evaluate the appropriateness of the Investment Manager's investment strategy.

However, failure to present a *prima facie* explanation of the appropriateness of the transactions may have been due to any of a number of different factors. For example:

1. The Investment Manager may have assumed that a general explanation of each transaction was sufficient, or
2. There was insufficient data to support any particular course of action and as a result a thorough financial presentation was not made, or
3. The Investment Manager did not investigate and analyze alternatives and so was not in a position to support any particular course of action with financial projections.

Factors two and three raise questions concerning the Investment Manager's compliance with the "prudent" guidelines outlined in the Asset Management Plan and with ERISA "prudence" requirements in general.

The following observations reflecting upon the Investment Manager's compliance with these prudence standards were made during the course of analysis of the Pension Trust reports and other materials over the past six months.

1. The "work-out" strategy was supposedly undertaken within the following parameters (from the AMP):
 - (A) Additional major Pension Trust investments in real estate should be undertaken, if at all, only when essential, and only when a clear net value to the Pension Trust is a reasonably probable result.
 - (B) Development of real estate requiring financial and physical contributions will be done by others or in joint venture with others.
 - (C) "It is not considered prudent for the Pension Trust to be a "developer" in the sense that it would undertake long-term, highly entrepreneurial risks, and itself invest large, additional sums in the projects."
 - (D) "By ERISA diversification standards, the Pension Trust would reduce its investment in real estate, and investing additional dollars in those real estate assets will not assist in that objective."

- (D) As of January 1979 Heck was unable to secure the construction financing which he had indicated six months earlier was "in hand".
 - (E) The Investment Manager proposed to entrust Heck with complete control of the development and of Pension Trust cash.
 - (F) Heck's planned contribution of cash to the development never occurred. The Pension Trust paid Heck's contributions, provided the collateral for the Heck loan and guaranteed the interest on that loan as well as interest on all other loans outstanding against the properties.
5. The Investment Manager's reliance upon Shenker's oral representation to provide more collateral, reinstate guarantees, etc., seems naive and unwarranted by previous experience with Shenker. The AMP states:
- "The cooperative mode of operation (that is the "work-out" of the real estate assets) is based squarely on Shenker's expressed willingness to do all he can to assure that the Pension Trust does not suffer loss on the loans. He has made representations of his intentions to refinance his holdings if possible, to sell other assets to raise cash for loan reductions, and to pledge assets as additional security for the loans and as security for his personal guarantee."
- Shenker's promises have not been fulfilled. In fact, it appears that not one dollar nor additional collateral has been received from Shenker. Coincidentally, Shenker's liabilities to the Trust and to third parties are being reduced by further investment of Pension Trust money. The Investment Manager has failed to pursue Shenker in accordance with the AMP.
6. Apparently, the Investment Manager has failed to take a defensive strategy with respect to the so-called contingent liabilities as originally planned in guideline #5:
- "Potential liabilities of the Pension Trust will be deferred to the greatest extent possible and fully defended."
7. Efforts to collect non-real estate receivables have not been fruitful.
8. The Investment Manager's proposal to use the Argonaut Insurance Company to bond the Heck construction project involved questionable judgment in as much as Argonaut defaulted on the previous bond for the GRID construction and caused the liability (possibly as much as \$5.5 million) to be transferred to the Pension Trust. Argonaut's financial condition is also questionable.

9. Outrageous attorneys and advisors fees have been paid by the Pension Trust, primarily in connection with the Gardnerville work-out (in excess of \$1 million in the first year). Counsel indicated during the December 27, 1978, meeting that substantial fees would be necessary to develop the other properties as well.
10. The Investment Manager's decision to resign only months after accepting the management position raises questions of professionalism, and
11. It seems that the transfer of the real estate properties from Sherker to the Upper Avenue Bank and now to Karsten, the latest Investment Manager, certainly weakens, whether by design or coincidence, the position of the Pension Trust in any future lawsuits against any of these for mismanagement. (Quite simply, the long-term nature of a real estate work-out would probably make it more difficult to demonstrate that any one particular Investment Manager "caused" the losses by his conduct during the period that the assets were under his management.)

CONCLUSIONS

This analysis was based upon data and information provided by the Investment Manager. Certain data which might have clarified or refuted our analysis of the work-outs (e.g. GRID Bond Audit, GRID Bond Agreement and other relevant documents) was requested from the Investment Manager but the staff was advised that these items were "not available".

In conclusion, it seems that neither the reports nor the management strategy of the Investment Manager have fulfilled the objectives or the reasonable expectations of the exemption and the Asset Management Plan.

Certain practices or conduct of the Investment Manager appear to be contrary to the best interests of the Pension Trust, and inconsistent with the prudent guidelines of the Asset Management Plan and ERISA prudence standards in general. In fact the transactions appear more certain to benefit Sherker and Affiliates than anyone else.

Proceeding without the data or financial analysis necessary to support a particular course of action seems to be a "seat of the pants" approach to investment management. The conduct outlined above in items 1-11 merely reinforces this conclusion.

REPORTING REQUIREMENTS

EXHIBIT A

In conjunction with its appointment, the Investment Manager has apparently been subject to three different reporting requirements:

1. the requirement to provide advance notice to the parties to the August 1977 stipulation for any transaction exceeding a value of \$100,000.00
2. the requirement set forth in the March 28, 1978, amendment to the Proposed Asset Management Plan:

"Specifically, the Investment Manager will provide by the 20th day of each month a report of its activities for the preceeding month to the parties to the stipulation and to the Pension Trust. Such a report will include the following:

- a. A report of each transaction entered into or action taken involving real estate related assets by the Investment Manager, such report to be in reasonable detail and to include the basis for entering into the transaction, including but not limited to, each binding commitment made by the Investment Manager with respect to assets of the Pension Trust and each abandonment, release of, or loss of any interest of or in any asset of the Pension Trust, as well as the filing of any litigation by or against the Pension Trust or its assets.
- b. A report of expenses incurred, including an accounting of the cost of professional advisors as to both fees and out-of-pocket expenses, and the Investment Manager's direct expenditures.

The supporting documentation behind such reports shall be made available on a reasonable basis to the report recipients who request access to such information."

3. the requirement set forth in the exemption:

"The Bank will report to the agencies certain transactions undertaken pursuant to the proposed exemptions. The agencies will review these reports and, if circumstances warrant, take appropriate action to protect the interests of the Pension Trust and its participants and beneficiaries."

The Bank must submit to the agencies a written report within 30 days after consummation of the transaction if the Bank actually knows that the transaction involves a person who is a party in interest or disqualified person as described above. The report must include a description of the transaction, the identification of the party in interest or disqualified person and its relationship to the Pension Trust and an explanation of why the transaction is in the interest of the Pension Trust and its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Pension Trust."

FINANCIAL ANALYSIS OF SEAVIEW VILLAGE (LINCOLN CITY, SAL-LA-SEA)

Conclusion: the so-called "work out" arrangement of the Upper Avenue Bank will apparently result in further losses to the Pension Trust. This analysis is based upon figures set forth in an appraisal report which was prepared for the bank by Coldwell Banker in February 1978. This is the only independent analysis of the property available.

Projected losses (Trust develops property)

- | | |
|---|------------------------------|
| 1. Assuming the most favorable conditions which are portrayed in the appraisal. (Exhibit 1) | \$460,000 expected loss |
| 2. Assuming more likely conditions (Exhibit 2) | \$2-3 million expected loss |
| 3. Assuming worst case (Exhibit 3) | \$7.35 million expected loss |

Analysis of Appraisal - Background

It should be noted that MAI Appraisals are generally ninety percent hyperbole and ten percent fact. The appraisal report of Seaview Village (Lincoln City Sal-La-Sea) is no exception. Facts which are useful to an evaluation of the subject property are buried in pages of prose extolling "beautiful scenery" and "convenience to schools and churches". For example, page seven of the report describes Lincoln City as one of the "fastest growing communities in the state". Although this claim may impress the casual reader, the subsequent paragraph continues with: population figures indicate "an increase of 2 percent over the 1970 census". The rate of increase for Lincoln City's population equals ten (yes, that's 10) persons per year. Amazingly some of this growth may have been due to annexation, since the city apparently has undertaken a policy of annexing neighboring communities. Growth for the entire county (1000 square miles) averaged 300 persons per year or roughly 100 families (based on national averages). (Compare to appraiser's projected sales of 100 lots per year.)

THE APPRAISAL

Any appraisal of real estate is subjective. In my opinion, the appraiser is absolutely correct in his technique of evaluating this development property. The use of so-called "comparables" (recent arms-length sales of comparable properties) is the most reliable and generally accepted method of determining market value.

My analysis of several hundred similar appraisals for the S.E.C. has demonstrated that they are generally overly optimistic, however. (The S.E.C. specifically prohibits the use of such appraisals in registration statement and reports.)

BEST CASE ANALYSIS - Professional fees are excluded

The appraiser's estimate results in a loss to the Trust of approx. \$460,000. (See Exhibit 1-Best Case) That loss is based upon the following assumptions (incorporated into the appraiser's estimated value)

- (1) Sale of 100 lots per year (Total 1000 lots)
- (2) Sales price per lot of \$12,500 adjusted by 3% price index, less \$5,000 lien per property.
- (3) Start up costs of \$500,000
- (4) Lincoln City approval of annexation of property
- (5) Lincoln City approval of \$5.2 million bond and sale of bond within 6 months
- (6) Immediate clearance of title to property.
- (7) Sale of lots for 100% cash.
- (8) Discounted Case flow at 15%.

MORE LIKELY CASE - Professional fees are excluded

As suggested above these "best case" assumptions may be unrealistic. The more likely projection (Exhibit 2) reflects the following analysis of these assumptions.

ASSUMPTIONS #1

Sale of 100 lots per year - this assumption is optimistic considering:

- (a) Lincoln City population has increased at a rate of only ten persons per year over the last eight years.
- (b) the County population for the same period has increased approx. 300 persons per year.
- (c) the appraisal reveals very few actual lot sales over the last few years (a handful in areas similar to subject property)

This does not support the "boom town" projections in the report. Adjust more likely case to 75 lots per year.

ASSUMPTION #2

Sale price of \$12,500 per lot (less \$5,000 improvement lien) is not supported by the "comparables" in the appraisal. The only relevant comparables are:

- (1) North 36th sales (p. 18 of appraisal report)
3 lots @ \$5,000/lot in June, 1977
- (2) Roads End lots (p. 19-20 of appraisal report)
9 lots @ average of \$9,000/lot during 1977

According to the appraisal report, the Roads End lots are improved. Several are significantly larger than average and the lots "are considered superior" to the existing subject property lots (that is, Sal-La-Sea) because of their location within the existing development and proximity and view to the coastline and beach (at p. 20).

This is the point where the appraiser's conclusions are unsupported by the analysis. He states that properties which are selling at \$9,000 per lot are superior to those at Seaview Village and yet concludes on page 26 that the Seaview lots will be worth \$12,500. A \$9,000 figure is more than generous. An \$8,000 figure would be more realistic (reflecting the appraiser's view that Seaview lots are inferior to the \$9,000 Roads End lots).

\$9,000 may be too high as well, but I have used a very optimistic \$9,000 value in the "more likely" projection.

ASSUMPTION #3

In the absence of additional data start up costs of \$500,000 appear appropriate.

ASSUMPTION #4 and #5

Immediate approval of Lincoln City annexation and subsequent approval and sale of a \$5.2 million bond issue are unlikely to occur overnight. An additional year at least would not seem unreasonable. The appraisal report at p. 15 states that:

"it should be noted that the economic feasibility of such development is tenuous in light of numerous governmental approvals required to execute the Sal-La-Sea project. Extensive delay or the inability to gain any one of the necessary governmental approvals, would, in my opinion, render the land undevelopable. This condition would have an extremely negative impact on the marketing potential of the property".

However, a negative adjustment to reflect this delay has not been made.

ASSUMPTION #6 - Clear Title

The cost to clear title (45 except as revealed during title search) would exceed \$1,250,000 and could take substantially longer than projected in best case analysis. Further adjustment has not been made, however.

ASSUMPTION #7 - Sale for 100% cash

Land sales in general and sales in this area in particular are financed by the seller. The best case analysis reflect sales for 100% cash. This is totally unrealistic. 20% cash and the balance over ten years would be a more realistic assumption. This would decrease DCF figure significantly. However, further adjustment has not been made.

ASSUMPTION #8 - Discounted Cash flow at 15% rate.

DCF of 20 - 25% would be more appropriate. This would result in a lower DCF number. However, the appraiser's selection of 15% has been retained.

WORST CASE ANALYSIS

Exhibit 3 reflects the Trust's total exposure to loss assuming worst case.

GENERALComment upon the Bank's decision to "work out" the Seaview Village property

Although there is no evidence to support this assertion, it should be noted that banks generally are biased in favor of work outs and away from write offs. So called "work outs" permit banks to carry properties at a much greater value for accounting purposes than would result from immediate write offs, thereby avoiding any appearance of financial difficulties. REITs and Banks used this ploy during the last real estate recession (1972-1974) (Documented by Federal Reserve Board/S.E.C. memoranda during this period).

TABLE 2: SEVENTEEN VILLAGES-MORE LITERACY PROJECTION (Assuming Development)

[illegible]

EXHIBIT 3: SEAVIEW VILLAGE-WORST CASE PROJECTION

This represents the total exposure to loss by the pension trust assuming the inability to market the Seaview Village properties or a general recession after the installation of all improvements to the property.

\$1,250,000	To clear title and prepare map
500,000	Start up costs
5,200,000	Bond Liability
400,000	Bond expense (first year's interest)
<u>\$7,350,000</u>	Total out of pocket expense plus liens on property

MEMORANDUM OF JANUARY STAFF MEETING - SUMMARY OF THE VALUE WORK-OUT

During the first week of January the financial analysis of the Cardnersville work-out was presented to the staff. In summary, it was concluded that the Pension Trust was placing approximately \$8 million additional dollars at risk in order to realize potential contingent liabilities of \$4-\$5 million and hopefully turn a profit. A December 27, 1978, meeting with Bank Counsel indicated that the Bank is convinced that a "work-out" is the only way to proceed on this property, although counsel at no time presented data or projections indicating that a work out was the best solution. A work out appears to be a reasonable decision only if we accept the assumptions with which the bank apparently began its analysis:

1. The Pension Trust has contingent liabilities of approximately \$4-\$5 million.
2. Defenses (including fraud) to such contingent liabilities should not be pursued.
3. Amounts owed to the Pension Trust by Shenker and others should not be pursued.
4. The Heck deal is viable, will yield profits to the trust, and is the only method of eliminating the contingent liabilities of \$4-\$5 million.

If we are unable to challenge the reasonableness of the first 3 assumptions, however, (which involve legal, not investment, decisions) then the Heck deal should be pursued unless expected losses exceed \$5 million (estimated maximum contingent liabilities).

I am unable to prove that the Heck deal will yield losses of that magnitude. I do know that the Trust will incur additional liabilities (personally or indirectly) of \$3-10 million dollars. In the event this development cannot be sold because of local or national economic conditions, e.g., tight money, then the trust will have that amount exposed to possible loss.

BEST BUSS SUMMARY ON CONTIN. NET LIABILITIES

\$1.1 million guarantee of Argonaut bond
 \$1.6 million claimed guarantee of V.B. loan to Plumas
 \$1.5 million in land contracts which could be lost
 \$4.2 million-total

SUMMARY OF HECK DEAL

Pension Trust Acquired units 6 & 7, 8 & 9 of Gardnerville.
 Shenker and Co. owe Pension Trust \$32 million + interest.
 Therefore, trust is losing \$3.2 million per annum in interest
 alone (10% on risk free government notes). The major
 components of the Shenker-Heck deal are:

1. Reduce Shenker liabilities to P.T. by use of credit against those liabilities depending upon amount realized by P.T. from land sales.
2. But no outright release of Shenker from any liabilities.
3. \$3.6 million loan from Valley Bank for Heck developments 12% for 5 years secured by 1st deed of trust on units 6 & 7. Interest guaranteed by Pension Trust.
4. \$3 million for offsite improvement. \$600,000 for delinquent assessments on GRID bonds.

M. PAUL HECK

1. Heck has filed for bankruptcy at least twice.
2. Three prior deals went sour
 - (a) parking garage collapsed
 - (b) housing development went bust
 - (c) Condo development went bust
3. Plumas Eureka Estates-a so called "successful" development is no Reston or Columbia. (Few homes actually built, no recent sales).
4. Heck does not have construction financing as he indicated he would.

Counsel for Pension Trust has added certain safeguards to the Heck deal which were absent before the DOL raised questions concerning Heck and which make the transaction somewhat more palatable:

1. All rights under contract may be reassigned immediately to new developer if Heck drops out or fails to perform.

The Analysis of the Gardner 1e work-out is presented in its simplest form as follows (Bank figures were precise analysis is not warranted because of nature of raw data):

1. Gross revenue based on Heck deal
200 lots @ \$12,000/lot or \$2.4 million (first year)
(increased slightly in subsequent years)

2. Expenses - Annual

GRID Interest	\$330,000
Interest on Heck Loan	432,000
Interest on V.B. Loan	192,000
Professional fees + R.E. Taxes (Pro Rata allocation of advisory fees and attorney's fees*)	300,000

\$1,254,000.00

3. Liabilities

GRID Bond	\$8.5 million
Heck Loan	\$3.6 million
V.B. Loan	\$1.6 million

\$10.7 million - additional
sums to complete improve-
ments & interest

4. Annual Principal for Heck
loans (\$3.6 million + V.B. Loan
\$1.6 million over 5 years)
Annual GRID Bond Principal

\$1.3 million

\$0.7 million

\$2.5 million annual
principal payment

First year cash flow is negative:

\$2.4 million minus \$3.25
million principal, interest -
fees* = \$1.25 million
deficit

*First year fees exceeded \$1 million and counsel gave no assurances that fees would decrease.

Cash flow improves over 5 year term of project (assuming bank projections) due to decreasing interest charges so that total deficit approximates \$2-2.5 million (if project develops as expected-total exposure if project fails is still \$8-10 million, i.e., principal and interest on loans plus professional fees minus value of property partially improved.)

2. An independent consultant will inspect all work to assure compliance with all agreements, applicable building codes, etc.
3. Heck will have no authority to handle or disburse funds.
4. Completion of improvements will be bonded by reputable insurance company (Fireman's Fund) rather than affiliate (Argonaut Insurance).
5. Net takedown limit will be imposed.
6. Heck will enter into no transaction with affiliates.
7. "Reputable" local builder will perform actual work (Eagle Valley Construction Co.).

SOUTHERN NEVADA CULINARY WORKERS & BARTENDERS PENSION TRUST

INDEX OF MATERIALS*

- A. Upper Avenue Bank Proposed Asset Management Plan and Amendment to Proposed Asset Management Plan
- B. Investment Manager's monthly report for April 1978
- C. Investment Manager's monthly report for May 1978
- D. Investment Manager's monthly report for June 1978
- E. Investment Manager's monthly report for July 1978
- F. Investment Manager's monthly report for August 1978
- G. Culinary Workers Pension Trust Financial Statements
- H. Coldwell Banker appraisal of Sal-La-Sea Property dated 1/16/78
- IJ. Coldwell Banker appraisal of Gardnerville Property dated 2/14/78
- K. Coldwell Banker appraisal of Murrieta-Hot Springs Property dated 2/15/78
- L. Title searches of various Pension Trusts and related properties
- M. Sam Clark's inspection of Murrieta-Hot Springs
- N. Sierra Charter Corporation and Affiliates
Various financial statements and other data
- O. Information concerning selection of a successor investment advisor
- PQ. M. Paul Heck financial statements and other information
- R. Solicitor's Office interrogatories
- S. Proposed Valley Bank of Nevada Note for Gardnerville
- T. Reports and other information submitted pursuant to exemption

*These materials are on loan from the Division of Enforcement

The CHAIRMAN. I understand this report revealed that the asset manager proposed three courses of action for management of the fund's assets. Is that right?

Mr. KANE. That is correct, sir.

The CHAIRMAN. Mr. Marshall reviewed and analyzed these proposals and concluded that all three proposals would result in the loss of large sums of money in varying degrees. Is that correct?

Mr. KANE. That is correct, sir.

The CHAIRMAN. Did Mr. Lanoff take any action?

Mr. KANE. From what I have been told, he then took action by having one other person also do a review of these two transactions and from what I understand, that review and the one that Mr. Marshall did, did not coincide.

The CHAIRMAN. OK. What I understand is that he had another report undertaken which in fact disagreed with Mr. Marshall's report, and the Office of Enforcement informally disagreed with the findings of the new report; is that correct?

Mr. KANE. Well, as far as we were concerned, yes, sir.

The CHAIRMAN. In other words, you agreed with Marshall?

Mr. KANE. That is correct, sir.

The CHAIRMAN. Could the Office of Enforcement have taken any action itself on Marshall's recommendations?

Mr. KANE. No, sir, we could not take any action because this case was now in the hands of the Office of the Solicitor.

The CHAIRMAN. Therefore, that left the Enforcement people in the position of covering leads—

Mr. KANE. That is correct, sir.

The CHAIRMAN. And you had given your views to Ms. Gallagher and Mr. Lanoff, but they overruled you.

Mr. KANE. That is correct, sir.

The CHAIRMAN. You had also given them these documents—

Mr. KANE. That is correct, sir.

The CHAIRMAN. Your recommendations—

Mr. KANE. Yes, sir.

The CHAIRMAN. And a lot of background information indicating that Mr. Shenker had borrowed hundreds of millions of dollars from various pension funds.

Mr. KANE. Yes, sir.

The CHAIRMAN. These Shenker transactions raise numerous possibilities of criminal misconduct. I think you would agree with that, wouldn't you?

Mr. KANE. Yes, sir.

The CHAIRMAN. How would you characterize the Solicitor's Office's relationship with the Department of Justice in pursuing these criminal cases?

Mr. KANE. Well, sir, in my own personal opinion I do not think it was of the greatest.

The CHAIRMAN. It was not good?

Mr. KANE. In my opinion, no, sir.

The CHAIRMAN. Would that be an understatement?

Mr. KANE. It possibly could because at one time I was advised that the U.S. Department of Justice had written a letter to the U.S. Department of Labor stating that they had very bad vibes regarding two of the cases that we were involved in.

The CHAIRMAN. I think you need to know, and those who are interested in this matter need to know that I presently have five GAO investigations going into this, including this particular matter.

Now the memo of understanding between the Labor and Justice Departments dated February 8, 1975, requires Labor to refer criminal matters to Justice. Referral, as the term is commonly understood around Washington, means a packaged investigation and analysis of an alleged crime. It has been my observation that Justice will not prosecute anybody without being presented an airtight package by another governmental agency, or at least that is generally their rule; is that correct?

Mr. KANE. Well, sir, the Office of Enforcement, we have a very close relationship with the Department of Justice and we have exchanged information back and forth with them but we never gave them a full package.

The CHAIRMAN. Neither did the Solicitor's Office or Monica Gallagher.

Mr. KANE. That I could not say. I do not think so.

The CHAIRMAN. Well, we just got a memorandum to Edward F. Daly from J. Vernon Ballard. The subject is the ERISA cases in litigation. It says:

Any ERISA enforcement matter which has reached a litigation posture or in which litigation has been authorized, and any other legal proceeding under ERISA in the courts or before an administrative tribunal is a matter principally within the responsibility of the Solicitor's Office. Except in the most unusual circumstances, no action or contact in such a matter should be taken without the prior express approval of the appropriate attorney in that office.

Specifically, personnel of LMSA, PWBP, are not to contact or attempt to obtain information from or convey information to any person or agency outside the Department of Labor or any DOL employee detailed or on temporary assignment to other governmental agencies on any matter relating to ERISA cases in litigation without prior specific approval by a responsible attorney. Inquiries made by persons not employed by the Department of Labor, including representatives of other Government agencies, should be referred to the appropriate attorney in the Plan Benefits Security Division, Office of the Solicitor.

Were you aware of that?

Mr. KANE. Yes, sir, I was aware that once we passed a case over to the Office of the Solicitor, we were not any longer involved in that case. That case went to them.

The CHAIRMAN. I see. In fact, the Justice Department after a referral, even sometimes in an airtight case, what might be referred to by an attorney as an airtight case, does not bring action. Isn't that correct?

Mr. KANE. That is correct, sir.

The CHAIRMAN. All right. Has such an airtight package, or even the package that you presented to Monica Gallagher, which appears to me to have very strong allegations and facts to back it up, ever been sent to Justice with respect to any Shenker allegations?

Mr. KANE. Yes, sir, it has.

The CHAIRMAN. When was that? Was it referred to the Justice Department?

Mr. KANE. Yes; I have a memo dated August 25, 1977, which states that we sent a copy of our July 22, 1977, report of investigation to the Department of Justice.

The CHAIRMAN. However, that is not a referral. That was just the sending of a report.

Mr. KANE. Right. That is correct.

The CHAIRMAN. When we are talking about a referral, we are talking about a referral of an actual case with all backup data.

Mr. KANE. No, sir, we did not do that.

The CHAIRMAN. You did not send that.

Mr. KANE. That is correct.

The CHAIRMAN. Neither did Ms. Gallagher or anybody else at Labor.

Mr. KANE. As far as I know, no, sir.

The CHAIRMAN. OK. Who told you that?

Mr. KANE. Excuse me, sir?

The CHAIRMAN. Did Ms. Gallagher, Mr. Sacher, and her assistant, Mr. Allen, did they all indicate to you, that they had not formally referred this matter?

Mr. KANE. Formally, no, sir, they did not send it over.

The CHAIRMAN. Were you instructed, either you or Mr. Daly, not to deal with Justice?

Mr. KANE. In this case, yes, sir.

The CHAIRMAN. That is again by Ms. Gallagher.

Mr. KANE. By her office.

The CHAIRMAN. Ms. Gallagher, Mr. Sacher, Mr. Allen, and others, is that correct?

Mr. KANE. Yes, sir.

The CHAIRMAN. Did the Justice Department ever complain about noncooperation by the Solicitor's Office in the referral of criminal information on this case to Justice?

Mr. KANE. Yes, sir. I have been advised that there was a letter that was sent by the Department of Justice to the Solicitor's Office which stated that they were not getting any cooperation in this case and one other case.

The CHAIRMAN. This is the letter from Assistant Attorney General Benjamin Civiletti, at that time, who wrote to Solicitor Carin A. Clause a blistering letter dated April 15, 1977. It was directed at this case and one other case. Is that correct?

Mr. KANE. That is correct, sir.

The CHAIRMAN. We will put all Kane documents, one through nine, into the record at the appropriate place. This is Kane document No. 9; the letter from Assistant Attorney General Benjamin Civiletti.

As I understand it, you gave Dave Slattery at Justice a copy of a complaint by Paul Kouris, K-o-u-r-i-s?

Mr. KANE. Yes, sir, I did.

The CHAIRMAN. He is an employee of the law firm employed by the investment manager, Upper Avenue Bank, alleging double billings to the pension firm by the law firm. Is that correct?

Mr. KANE. That is correct, sir.

The CHAIRMAN. That happened in early 1978?

Mr. KANE. Yes, sir.

The CHAIRMAN. Now as I understand it, the Solicitor's Office was aware of this complaint by Kouris. Is that correct?

Mr. KANE. Yes, sir, they were.

The CHAIRMAN. What did they—

Mr. KANE. How we got involved in the Office of Enforcement, we received a memorandum from the Office of the Solicitor, and in their memo they had told this Mr. Kouris to contact the plan trustees and the Upper Avenue Bank regarding this double billing. Well, when it came over to us in the Office of Enforcement, we figured that here was an embezzlement going on and it should be given to the Justice Department.

I then spoke to Ed Daly, and Ed Daly and I—I called Dave Slatery. I told him about it. I brought all the papers over to him, and I believe they gave it to a grand jury out in Chicago.

The CHAIRMAN. OK, we will put Kane documents Nos. 9 and 10 into the record at this point.

[The material referred to follows:]

ASSISTANT ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

Department of Justice

Washington 20530

April 25, 1977

Kane Document
9

Ms. Carin Ann Clauss
Solicitor of Labor
Department of Labor
200 Constitution Avenue, N.W.
Washington, D. C.

Dear Ms. Clauss:

The Employee Retirement Income Security Act of 1974 (ERISA) gives the Department of Labor the authority to enforce the fiduciary standards set out in the Act. In the performance of this duty, numerous audits and investigations of employee benefit plans are conducted. Where these audits and investigations uncover information indicating breaches of the fiduciary standards, there may also be violations of criminal law.

The Memorandum of Understanding concerning the investigation and prosecution of matters arising under Title I of the Employee Retirement Income Security Act of 1974, executed on February 9, 1975, by Acting Attorney General Lawrence H. Silberman and Secretary of Labor Brennan, establishes the obligations and responsibilities of the Departments of Justice and Labor in this area.

Section 506 of the Act provides that the Attorney General or his representatives shall receive from the Secretary of Labor for appropriate action such information developed in the performance of the Secretary's functions under Title I of the Act as may be found to warrant consideration for criminal prosecution. Paragraph I of the Memorandum of Understanding provides that those activities investigated by the Department of Labor which may warrant criminal investigation will be referred to the Management and Labor Section, now the Government Regulations and Labor Section of the Criminal Division.

Several matters have come to my attention which I find disturbing. It appears that in one case we were not informed of matters obviously requiring criminal investigation until after a civil suit was filed by the Labor Department and we read about possible violations



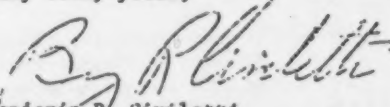
in the newspaper. In another case, an attempt was made to interfere with the issuance of a grand jury subpoena for certain records which might indicate the payment of substantial kickbacks in violation of 18 U.S.C. §1954. The recurrence of these types of situations is unacceptable and not within the spirit of the Memorandum of Understanding.

Although the Departments of Justice and Labor have separate and distinct obligations and responsibilities, each should not operate in its own sphere so as to interfere with and impede the efforts of the other. I am certain that you will appreciate our desire to avoid the serious difficulties that can affect any criminal case if we are not notified at the outset when information indicating possible criminal violations is uncovered. It is at that point that both our interests can be protected by the establishment of appropriate procedures to guide our investigations.

In order to obtain these objectives, I would suggest that appropriate officials of your staff meet with personnel of the Government Regulations and Labor Section of the Criminal Division to discuss these problems and establish procedures which will obviate them in the future. Mr. Philip Wilens, Chief of the Section, would be happy to arrange such a meeting at the convenience of whomsoever you designate.

Your cooperation in this matter will be deeply appreciated.

Very truly yours,



Benjamin R. Civiletti
Assistant Attorney General
Criminal Division

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20540

NOTICE CONCERNING

10.



APR 17 1978

MEMORANDUM FOR THE FILE

FROM: Robert R. Bitticks *RBB*

SUBJECT: Marshall v. Schmoutey - Paul Kouris

In the afternoon and in the evening of Friday April 14, 1978 I had two telephone conversations with Paul Kouris who identified himself as a Los Angeles attorney and former employee of Joel Carlins, an attorney representing the investment manager for the Southern Nevada Culinary and Bartenders Pension Trust. Mr. Kouris telephoned me in the afternoon and made serious allegations about Mr. Carlins. After conferring with Judy Burghardt and Norman Goldberg, I called Mr. Kouris back that evening.

During the afternoon conversation, Mr. Kouris said that Mr. Carlins had been "raping the fund" by padding time sheets and pushing everyone who worked for him to pad their time sheets also, and other things (which he did not elaborate on). Mr. Kouris said he finally quit because of this. He said he couldn't sleep at night and was calling because he has a conscience. He said he wanted to keep his name out of it if possible because Mr. Carlins is powerful and threatened to destroy his legal career if he told anyone. He said he was not sure who to talk to but had been advised to start with the Labor Department. I told Mr. Kouris I would speak with the appropriate people in our office and get back to him later that day or Monday.

I immediately discussed the conversation with Judy and Norman. We agreed that it would be best to see if Mr. Kouris would talk with Bruce Bailey who represents the Pension Trust and Carver Nixon of the Upper Avenue Bank. Our thought was that the trustees and the investment manager have the most direct and immediate concern with Mr. Carlins' fees and would be in the best position to look into Mr. Kouris' allegations. In addition, because of Mr. Kouris' concern with confidentiality we agreed that if he could speak with Mr. Bailey before a meeting of the trustees scheduled for Monday night, April 17, at which fees are to be discussed, Mr. Bailey might be in a position to insist upon detailed support for all fees billed, or take some similar action, without disclosing that he had spoken with Mr. Kouris. We also agreed that it was important that the bank be informed because it retained Mr. Carlins and is directly responsible for his activities.

I called Mr. Kouris back early Friday evening and told him our recommendation that he speak with Mr. Bailey and Mr. Nixon. He indicated he knows both of them, but was a little reluctant to speak with Mr. Bailey because of concern that he and Mr. Carlins are close. With respect to the bank, he was concerned because Allen Harrinson had hired Mr. Carlins, although he knew that Mr. Harrinson left the bank. He also said that Mr. Harrinson is joining Mr. Carlins' law firm. He finally agreed to speak with Mr. Bailey and Mr. Nixon. I suggested he consider also speaking with Martin Hoffmann. Finally, I suggested that, because of the possible criminal aspects to his charges, he consider contacting the Justice Department or the local office of the U.S. Attorney. He said they had told him to first contact the Labor Department. I then asked him more about his allegations. He stated that hours and expenses were overcharged to the Pension Trust. Hours which were not worked were added and hours which were worked for other clients were charged to the Pension Trust (as well as to the other clients). Mr. Kouris said he has been an investigator with the Los Angeles office of the S.E.C. and kept detailed notes after he figured out what was going on, after about three weeks on the job. He gave the following examples:

1. He would be flown first class from Los Angeles to Chicago on what he thought was an unnecessary trip and the Pension Trust would be billed for the cost plus 1/2 day of time, then he would be flown back to Los Angeles first class to attend a bar review class and the Pension Trust would be billed the cost plus 1/2 day of time;

2. Mr. Carlins held a board of directors meeting for another client and billed the Pension Trust for that time, and billed the other client; and

3. Mr. Carlins kept reminding his employees not to refer to the office in Los Angeles as the firm's California office or Los Angeles office because an office in California could not be justified because the Pension Trust had California counsel, but in fact the firm had opened an office in Los Angeles and Mr. Carlins bragged about it being overhead-free.

I told Mr. Kouris that, although we thought he should speak with Mr. Bailey and Mr. Nixon, we have a substantial interest in his allegations and would like to keep our communications with him open. I also told him we cannot promise him confidentiality and he said he understood that but hoped we would do what we could. We agreed that I will call him Wednesday morning, April 19, to follow up on his conversations with Mr. Bailey and Mr. Nixon. He again promised he would speak with them, and repeated that this is a matter of conscience.

The CHAIRMAN. An attorney that worked for Ms. Gallagher advised Kouris to contact the trustees of the plan and the bank president. Then one of her attorneys informed the trustees of Kouris' allegations. Is that correct?

Mr. KANE. That is correct.

The CHAIRMAN. When you suggest the Solicitor's Office, you mean the office under Monica Gallagher's supervision. Is that right?

Mr. KANE. That is correct, sir.

The CHAIRMAN. Did the Solicitor's Office then refer this to Justice?

Mr. KANE. No, sir.

The CHAIRMAN. Didn't that shock you?

Mr. KANE. Yes, sir, it did. It shocked me very much. That is the reason why, when we found out about it, we in the Office of Enforcement made sure it went over to the Department of Justice.

The CHAIRMAN. As I understand, that upset Ms. Gallagher, that you had contacted Justice yourself in disregard of that memorandum I read earlier. Is that correct?

Mr. KANE. Yes, sir.

The CHAIRMAN. Was she upset?

Mr. KANE. She was very much upset because from the information that I had received back from the Department of Justice, the U.S. attorney in Chicago who was handling the case was very upset and he wanted to issue a grand jury subpoena for the people in the Office of the Solicitor to come and explain why they had done this because as far as they were concerned—

The CHAIRMAN. Why they had not informed him about this, you mean?

Mr. KANE. Right, and also he felt that this man Kouris who was the informant was put in a bad light and may possibly be killed.

The CHAIRMAN. That is a heck of a way to treat an informant in one of these cases, isn't it?

Mr. KANE. It sure is, sir.

The CHAIRMAN. I take it the strike force attorney's name was Roger Markley?

Mr. KANE. Yes, sir, it was.

The CHAIRMAN. I understand he was so upset about the Solicitor's Office informing the fund of Kouris' allegations that he threatened, as you said, to issue a grand jury subpoena to the Solicitor's Office attorneys so they would have to explain their actions. He also felt their actions endangered Kouris' life.

Mr. KANE. That is correct, sir.

The CHAIRMAN. I think it needs to be pointed out for the record that the fund, of course, was in an adversarial position regarding the Labor Department, since the lawsuit was filed against both them and Shenker. Is that right?

Mr. KANE. That is correct, sir.

The CHAIRMAN. Is Mr. Kouris still alive?

Mr. KANE. I believe so.

The CHAIRMAN. I hope so. We have to admit we could not find him.

Another point I want to cover with you, Mr. Kane, is your investigation of Paul Heck. He is the developer Upper Avenue Bank

chose to "work out" Shenker's Nevada real estate. Is it true that Mr. Heck had gone through prior bankruptcies?

Mr. KANE. Yes, sir. We had found out he went through two personal bankruptcies and one other that was dismissed.

The CHAIRMAN. I understand you learned this as a result of your August 22, 1978, interview with Heck, and you were able to confirm it on October 12, 1978. Is that correct?

Mr. KANE. That is correct, sir.

The CHAIRMAN. What action did you take when you got positive proof of the Heck bankruptcies?

Mr. KANE. Well, when we got proof of that I then went to Ed Daly and we then took the information to the Administrator, Mr. Lanoff.

The CHAIRMAN. That is Ian Lanoff?

Mr. KANE. Yes, sir.

The CHAIRMAN. What did he do?

Mr. KANE. As far as I know, there was nothing he could do because Mr. Heck was already on board with the bank for about 4 months and he was already working there.

The CHAIRMAN. Didn't Mr. Lanoff say words to the effect that when you deal with Shenker you have to deal with people like Heck?

Mr. KANE. He may have at that time, sir.

The CHAIRMAN. Do you recall anything like that?

Mr. KANE. I recall one other statement. It was not made about Mr. Heck but he may have also made that statement regarding Mr. Heck.

The CHAIRMAN. What was the other statement you recall?

Mr. KANE. The other gentleman who was employed by the Upper Avenue Bank, a Mr. Marinson, we had found out from the Department of Justice that there was a possibility that he was involved with unsavory people who may possibly have been associated with the mob.

The CHAIRMAN. You are talking about the Cosa Nostra?

Mr. KANE. Yes, sir.

The CHAIRMAN. Why wasn't the investigation of Heck conducted until after he was approved by the Department?

Mr. KANE. The only reason that we in the Office of Enforcement got involved in this was that Mr. Heck had submitted a financial statement, and Jack Ballard and I were asked to review this financial statement. In reviewing the financial statement, we just could not make heads or tails of it and we decided that in order to see what was meant by this, we would have to go out and talk to Mr. Heck.

The CHAIRMAN. Did you talk to him?

Mr. KANE. Yes, sir, we went out to talk to him on August 23 of 1978.

The CHAIRMAN. OK. Now Mr. Ballard was Mr. Lanoff's deputy, was he not?

Mr. KANE. Yes, sir.

The CHAIRMAN. What has the experience been with Heck and the Gardnerville job that he was supposed to be reviewing, taking care of?

Mr. KANE. From what I understand, Mr. Heck has filed again for bankruptcy and he is being sued by the group that is presently the asset manager.

The CHAIRMAN. That is Mr. Karsten?

Mr. KANE. Mr. Karsten.

The CHAIRMAN. OK. In your opinion, could all of this have been avoided if you had been asked to do a timely investigation prior to the selection of Heck?

Mr. KANE. Yes, sir.

The CHAIRMAN. Mr. Kane, did any of the numerous Labor Department attorneys assigned to this case ever consult you on the investigative material you developed?

Mr. KANE. Yes, sir. There was only one. There were about seven lawyers who were assigned to this case but only one actually came over and talked to us to actually get a feel about this, and that is the one who is presently handling the case, Mr. Jack Young.

The CHAIRMAN. That is who we are going to talk to tomorrow.

Mr. KANE. Yes, sir.

The CHAIRMAN. Mr. Kane, had they taken your advice—which would seem simple enough to me—to call the notes due while litigating at the same time, and demanding that an injunction be issued, and throwing Shenker into voluntary or involuntary bankruptcy, do you think Shenker would have failed to pay off this debt?

Mr. KANE. No, sir.

The CHAIRMAN. No way.

Mr. KANE. No way, right.

The CHAIRMAN. Why?

Mr. KANE. Well, my idea was that if he did not pay he would lose the Dunes Hotel. He also would not be able to open up anything in Atlantic City because I believe both of them would say that because of his actions they would not accept him.

The CHAIRMAN. Yes, but by your own statement his 1976 financial statement indicated he only had \$33 million in net assets. These had gone from something less than a million originally. Is that correct?

Mr. KANE. That is correct, sir.

The CHAIRMAN. What makes you think he could have paid \$45 million off?

Mr. KANE. Well, I am sure he would have obtained the money either from his family or some other sources. I think at the time that we conducted this investigation, I think he only owed \$31 million.

The CHAIRMAN. Only.

Mr. KANE. Yes, sir.

The CHAIRMAN. Therefore, you are saying that you feel confident, having investigated these matters in that area and this type of a context, that \$31.5 million or the amount due and owing then could have been obtained by Mr. Shenker.

Mr. KANE. I believe so. Yes, sir.

The CHAIRMAN. Do you really have any doubt about that?

Mr. KANE. No, sir, I do not. I am sure, from knowing how he operates, I am sure that he would come up with the money some way or another.

The CHAIRMAN. You have followed his career for quite a while, haven't you?

Mr. KANE. Yes, sir, I have.

The CHAIRMAN. As an investigator?

Mr. KANE. Yes, sir.

The CHAIRMAN. So have a lot of other people.

Therefore, now these assets that really should be worth at least \$45 million, using the low interest rates that Mr. Shenker has the benefit of—

Mr. KANE. Yes, sir, he has.

The CHAIRMAN. Are now worth around \$11 million, if that.

Mr. KANE. That is correct, sir.

The CHAIRMAN. Would you call that a crime?

Mr. KANE. Yes, I would, for the poor people who are not going to get their pensions.

The CHAIRMAN. So would I.

With that, we will conclude this day's hearing until tomorrow. Our witnesses for tomorrow will probably begin with Mr. Young, then Ms. Gallagher, Ed Stern, Ian Lanoff, and I am sure hoping that the Justice Department attorneys show up who are handling this matter directly. I am not sure that they are going to but we are demanding that they do. If they do not, we will just have to see what happens.

Thank you so much.

With that, we will recess until tomorrow.

[Whereupon, at 12:47 p.m., the committee recessed, to reconvene at 9:30 a.m. on Wednesday, February 24, 1981, in room 4232, Dirksen Senate Office Building.]

LABOR DEPARTMENT ERISA COMPLIANCE

WEDNESDAY, FEBRUARY 24, 1982

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to recess, at 9:45 a.m., in room 4232, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Hatch and Nickles.

Staff present: James Phillips, Dan Gill, Ray Mollenhoff, and Frank Silbey, staff investigators.

OPENING STATEMENT OF SENATOR HATCH

The CHAIRMAN. Today the committee resumes its series of oversight hearings on how the Labor and Justice Departments handle enforcement cases under the 1974 Employment Retirement Income Security Act, or ERISA, as it is known.

Yesterday, for the first time, we held open oversight hearings into how Labor handles such cases as they are referred from around the country. We found that a very substantial backlog had accumulated, including numerous highly significant cases.

We heard admissions from Labor personnel intimately familiar with the situation at the Department's Solicitor's Office that they could not cope with that backlog. It was shown that the statute of limitations had run on certain cases, including one significant potential criminal situation involving Teamsters Local 299 in Detroit, Mich., Jimmy Hoffa's old home base and local. There were at least two other lapses we know of as of now.

The statute of limitations, according to the records of the Department, was about to run on another 36 cases, a danger which some suggest was avoided by the Solicitor's Office by administratively closing out 163 cases. Embarrassment was temporarily avoided but only through what appears to be concealment.

Such administrative legerdemain was largely accomplished by shunting back most of those 163 cases to Labor's Office of Enforcement from which they had originally come to the Solicitor's Office. The Office of Enforcement was told to seek voluntary compliance from many of the worse actors and hardest cases in the labor movement, people whose careers had been based on systematic abuse of working people's resources.

Yesterday the Solicitor's Office admitted under oath that they had indeed watched indifferently as the statute of limitations ran

on several serious cases. Maybe that is not quite accurate. They had indeed seen the statute run on several serious cases.

They admitted they possessed no effective tracking system for the cases until recently. Rather than install a computerized filing system, they, in my opinion, are still keeping track of these complex cases on a manual basis. They are trying to fight, it seems to me, modern gangsters with 19th century methods.

Yesterday's admissions reveal that Ms. Gallagher, the Associate Solicitor, did not refer significant cases to the Department of Justice for criminal action. Mr. Kane, who appears to me to be a brave, able, and tough-minded public servant from the Office of Enforcement, told us yesterday that he fought persistently to get Ms. Gallagher to refer such cases to Justice, and especially in this one case.

He also tried again in vain to have her act vigorously in the public interest against Morris Shenker in the Culinary Workers Pension Trust situation. In a confidential document obtained by the committee, Ms. Gallagher admits Shenker's equity in The Dunes Hotel exceeded \$30 million, yet she told Kane it would be futile to proceed against Shenker's assets because they were all pledged.

Her refusal to act in such a manner against Shenker's assets allowed him financial leeway to avoid repaying millions of dollars to that union's fund, preserving the network of holdings, and perpetuating a still ongoing series of abuses of the retirement moneys of ordinary working people who make up that union.

Kane's courage merits this committee's respect, just as I think the inaction of the Labor Department, in particular Ms. Gallagher, merits its condemnation. How hollow, in retrospect, does yesterday's rhetoric sound about the rights of working people in the face of such ongoing systematic abuse in the Department.

The Labor Department has known all about this for years, while producing only a 1977 civil suit, which still lacks even a trial date. But as complex as it is and as was shown on the chart yesterday, I will not complain about that.

The Culinary Fund case, in *microcosm*, is a condemnation of how the entire Federal Government has handled racketeering at the expense of union pension and related funds. An informant named Kouris was mishandled so badly by Labor personnel that his life was placed in jeopardy. The litany continues.

The Solicitor's Office insisted that the Office of Enforcement personnel not deal on their own with Justice, guaranteeing that the other half of the Federal team received no formal, specially flagged referrals from Labor, especially in this matter. How convenient for Mr. Shenker and others who wish to retain the status quo.

The retirement funds of millions of Americans have either been abused or are in danger of such abuse in the manner described and cannot rely on alert, prompt Federal protection. Certainly my pessimism about the Labor Department is amply proven and documented.

I am pleased that changes are being implemented, and I have commended the Solicitor for instituting them.

But why include Justice? The committee's experience with Justice not only adds to my pessimism but delineates a state of affairs

deserving public exposure. After finally outlining the Culinary case at Labor, we sought to define Justice's role. Why had that Agency done nothing? What did it know? When did it know what? Who worked on it? How could a case as serious, long-running, and blatant as Shenker's looting of the Culinary Pension Trust go so long without no-nonsense action by Justice?

I instructed staff to find out, not wishing to place all blame on Labor. What follows is the anatomy of a runaround, followed by a series of bureaucratic evasions culminating in a stonewall.

Three Justice Department attorneys, Geoffrey Anderson, David Slattery, and Michael DeFeo, had played recognizable roles in this case. On January 25, 1982, our staff contacted Anderson, and we were informed he required clearance to discuss matters with us.

After not hearing from him, we called again on February 2, three times on February 3, twice on February 4, and once on February 5, always leaving the message that the chairman wanted him interviewed. Except for the first call, he did not respond.

The committee was advised at last to call Marshal Kane, Deputy Assistant Attorney General for Legislative Affairs, who apparently had power to clear line attorneys for congressional contact. Kane informed our staff he had passed our request to the Criminal Division and that an answer would be forthcoming by the next day, February 12, so committee representatives could fly to Las Vegas to interview Shenker and Anderson.

Next came a call from David Margolis, chief of the Organized Crime and Racketeering Section of the Criminal Division, stating that clearance would take several days. All attorneys involved, he claimed, would have to be contacted and told to submit a memo about their knowledge of the investigation.

The committee registered strong disapproval over Anderson's continuing practice of not returning calls. Anderson thereupon did call, stating that as soon as clearance was granted he would meet with our staff in Las Vegas.

Based on this call and the previous one from Margolis, I ordered staff to make air and hotel reservations. These were canceled when clearance was not forthcoming.

Enter John C. Keeney, Deputy Assistant Attorney General, a man who has been Acting Attorney General four times. He bluntly informed committee staff that these men would not be made available because of Department policy. In other words, "Go away, congressional committee; we choose not to cooperate with you."

Here is naked bureaucratic arrogance, in my opinion, by a non-elected official. He told our staff he would do the testifying and was informed that this would be unsatisfactory to me.

We were then informed that Lowell Jensen, head of the Criminal Division, would testify. I again indicated this was unacceptable in a personal call to Mr. Jensen.

At 4 p.m., February 22, committee staff met with Keeney, Margolis, and Jerry Toner of the Labor Section. Keeney made available a 9-page rough draft memo which ostensibly answered our questions. Our staff was only allowed to take notes. Those notes appear to show there is considerable memory loss by Department attorneys who worked on the case, as compared to Labor's memos where names of Justice lawyers were mentioned.

The three Justice career officials added that Jensen was still expected to testify, despite my specific instructions and messages. On my instruction, the continued unacceptability of this proposal was reiterated at midday, February 23. I again insisted on the presence of all three line attorneys.

A final response came that day in the form of two calls. One was from Marshal Kane, the other from Bob McConnell, head of Legislative Affairs. I was advised that the Department of Justice "could not honor the Senator's request and that no one from the Department of Justice would be present at the hearings on February 24."

That is how the Justice Department responds to a good-faith attempt by the chairman of the committee with jurisdiction to find out what Justice has done in the Shenker/Culinary Workers Pension Trust case.

Mr. Shenker, it seems to me, has to be very happy about this. Any other individuals apprehensive over these and subsequent hearings certainly must be delighted as well. Mr. Shenker need not invest much in expensive legal talent so long as such inquiries are treated in this manner by the career Justice Department bureaucracy, presumably with permission of high-ranking political appointees. A more clear-cut case of bureaucratic abuse, in my opinion, is hard to find, just the kind of abuse President Reagan campaigned against so sincerely for so long.

The Culinary Workers rank and file have to be unhappy. The committee is very unhappy. All other committee and subcommittee chairmen of the Congress have to be extremely unhappy.

This immediately raises questions about every case Justice is referred by other Federal agencies. Is it a cover-up of a very serious criminal case by a Federal Department? Is Justice guilty of even worse behavior than Labor? Labor admitted a number of mistakes yesterday. I do not believe that Justice will long evade its constitutional obligations to Congress, Mr. Keeney's best efforts to the contrary.

President Reagan did not run on the bureaucratic ticket, but the questions raised here are deeply troubling for our country. The Shenker affair is an abomination. The backlog at Labor and how it has been handled is, I think, a national disgrace. Everyone has been taken good care of but the little people who commonly work for the minimum wage, whose money has been methodically taken, freely used by a man who has made a lucrative career of bleeding union pension trusts.

Where are the self-annointed champions of working people now? How does their campaign rhetoric sound in this case? There are dozens more cases like this, I am convinced, some equally as repugnant.

There is no masking these ugly truths. Did not anyone know? Is everybody going to stand in a circle and point to their right claiming, "T'was him," as in Thomas Nast's immortal cartoon about the "Tweed Ring"?

Why does a Senator who has been repeatedly villified as antilabor have to force this issue in this manner? Does not anyone care about these people? I think it is a shame for our country and its institutions. It is a disgrace to our heritage. It needs no further rhetoric from me, except for just this one pledge.

This committee under my chairmanship will go through every single file of interest at Labor. We are very grateful to Mr. Ryan for working with us and being willing to open up those files to us, to Mr. Clayton for his desire to get this mess under control, and to others at the Labor Department, including those who testified yesterday, that they want to get it under control—Mr. Leibowitz, Ms. Gallagher, and others.

We are going to hold public hearings. I hope we can hold them quickly, although it takes some time to prepare even a hearing as limited as this one. We are going to force the situation so that no self-serving bureaucracy in Washington will be able to keep us from the truth.

I invite the aid of honest organized labor and others of good will, honest business people, and honest law enforcement officials, regardless of political belief. This committee shall not cease its efforts until the full truth is publicly recorded, regardless of political considerations, embarrassment, or behind-the-scenes maneuver. We are going to demand and receive action from Labor and Justice in these cases. We are going to make these bureaucratic agencies function in a manner so as to return these funds to the working people who rightfully own them.

There will have to be plausible excuses for any substantive delays. This committee wants action. We want laws enforced. We want an end to the spectacle these cases constitute.

We received no input from Mr. Shenker until Monday. There was no time for staff analysis. We stand ready to do a hearing on-site in Las Vegas as soon as he is well enough.

Mr. Shenker sent us a letter, dated January 22, 1982, from the law offices of Morris Shenker. It says:

Dear Senator Hatch: Pursuant to discussions between counsel for your committee and my counsel, I am submitting for your committee's use a draft of my prepared testimony. Due to the relatively short period of time available to my staff and me for preparing this statement, I have not had time to thoroughly review it or include all of the information that may be available. However, I sincerely believe that the information I am supplying is reliable and trustworthy. My staff and I will continue to review the files for additional information and forward same to you. If we have failed to address a particular area of interest to the committee, please feel free to contact my counsel or me, and we will attempt to address that area. Best regards.

The date was incorrect. It should be February 22 rather than January 22, although that is what is on the letter.

That is in response to a letter from me to Mr. Shenker. The first letter we received was dated February 16, 1982, which said:

Dear Senator Hatch: On February 12, 1982, I received your letter inviting me to appear as a witness on February 24, 1982, before your Committee on Labor and Human Resources. Unfortunately, because of the nature of my illness and my age—75 years—I have been advised by my attending physician, Dr. Joseph L. Fink, as reflected in his attached affidavit, that my appearance and giving testimony before your committee at this time would be dangerous to my health and would pose a serious threat to my life. He has advised me that any setback in my condition would be fatal. Under these circumstances, I must therefore respectfully state that I am unable to appear and give testimony at this time. Your letter requests that I submit copies of my prepared testimony by February 17, 1982. In view of the fact that I did not receive your letter until February 12, it is impossible to complete the preparation of a written statement for delivery to your committee by February 17. However, I have addressed myself and my staff to the preparation of such written statement and will forward same to your office as soon as possible. Respectfully, Morris A. Shenker.

We also have an affidavit of the doctor, which we will put in the record. All three of those letters and the affidavit from the doctor will be inserted in the record at this point.

[The material referred to follows]

*Law Offices***MORRIS A. SHENKER**241-6116
AREA CODE 314BERNARD J. HELLMAN
L. KOPLAR SHENKER
JAMES F. MANGIE, JR.
JOHN L. ROGER
JAMES L. ZEMELMAN
CORDELL SIEGEL
JEFFREY J. SHANK
E. MICHAEL MURPHY
ANDREW F. FUZDER
ANTHONY A. EMAILA

SUITE 802 - 408 OLIVE STREET

Saint Louis, Mo. 63102

January 22, 1982

The Honorable Orrin G. Hatch
Chairman, United States Senate
Committee on Labor and
Human Resources
Dirksen Senate Office Building
Room 4230
Washington, D.C.Attention: James Phillips, Esq.
and Dan Gill, Esq.

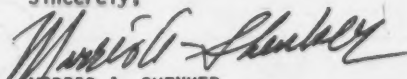
Dear Senator Hatch:

Pursuant to discussions between counsel for your Committee and my counsel, I am submitting for your Committee's use a Draft of my prepared testimony. Due to the relatively short period of time available to my staff and me for preparing this statement, I have not had time to thoroughly review it or include all of the information that may be available. However, I sincerely believe that the information I am supplying is reliable and trustworthy.

My staff and I will continue to review the files for additional information and forward same to you. If we have failed to address a particular area of interest to the Committee, please feel free to contact my counsel or me and we will attempt to address that area.

Best regards.

Sincerely,


MORRIS A. SHENKER

MAS:cs

Enclosure

COMMITTEE ON LABOR AND
HUMAN RESOURCES
WASHINGTON, D.C. 20510

GEORGE W. PUTTS, JR., CHIEF COUNSEL,
4. PATON, STAFF DIRECTOR AND GENERAL COUNSEL.
JACK S. HEDGECOCK, U.S., MINORITY STAFF DIRECTOR.

Mr. Morris A. Shenker
c/o Dunes Hotel
3650 Las Vegas Boulevard, South
Las Vegas, Nevada 89109

On February 23 and 24, 1982, the Committee on Labor and Human Resources will hold hearings on the Labor Department's handling of the Southern Nevada Culinary Worker's pension fund enforcement case. This letter makes formal the oral invitation that my staff has made through your attorneys. That is, that you appear as a witness on Wednesday, February 24.

The February 24th hearing will be held at 9:30 a.m. in Room 4232 of the Dirksen Senate Office Building. Please submit a copy of your prepared testimony to the committee office by the close of business February 17. If any questions arise concerning this matter, please address them to Messrs. Dan Gill or Jim Phillips of the Committee staff at (202) 224-9285.

Sincerely,

Orin L. Hatch

Orrin G. Hatch
Chairman

OGH : j pm



3650 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA 89109
(702) 737-4110

MORRIS A. SHENKER
CHAIRMAN OF THE BOARD

February 16, 1982

Honorable Orrin G. Hatch
United States Senator
Senate Office Building
Washington, D. C.

Dear Senator Hatch:

On February 12, 1982 I received your letter inviting me to appear as a witness on February 24, 1982 before your Committee on Labor and Human Resources.

Unfortunately, because of the nature of my illness and my age, 75 years, I have been advised by my attending physician, Dr. Joseph L. Fink, as reflected in his attached affidavit, that my appearance and giving testimony before your Committee at this time would be dangerous to my health and would pose a serious threat to my life. He has advised me that any setback in my condition would be fatal.

Under these circumstances I must therefore respectfully state that I am unable to appear and give testimony at this time.

Your letter requests that I submit copies of my prepared testimony by February 17, 1982. In view of the fact that I did not receive your letter until February 12, it is impossible to complete the preparation of a written statement for delivery to your Committee by February 17. However, I have addressed myself and my staff to the preparation of such written statement and will forward same to your office as soon as possible.

Respectfully,

A handwritten signature in dark ink, appearing to read "Morris A. Shenker", is written over a horizontal line.

MORRIS A. SHENKER

MAS:jm

A F F I D A V I T

JOSEPH L. FINK, M.D., an adult individual, having been duly sworn according to law, upon his oath deposes and says:

1. I am a Doctor of Medicine (M.D.), and a Diplomate of the American Board of Internal Medicine. I am a practicing physician in Las Vegas, Nevada, and I have been attending Mr. Morris A. Shenker in Nevada during his recent illness.

2. On or about June 3, 1980, Mr. Shenker sustained a severe myocardial infarction while a passenger on a trans-Atlantic flight to London. After an emergency landing in Halifax, Nova Scotia, Mr. Shenker was hospitalized there for twenty-seven (27) days during which time he suffered a serious cardiac arrest and was subsequently placed on life support systems for approximately nine (9) days. After his condition was stabilized, Mr. Shenker was transferred to the United States, where he underwent open heart surgery, which included resection of a cardiac ventricular aneurysm and bypass grafts.

3. Mr. Shenker's recovery has been slow. His activities are substantially restricted; he lives in a most protected environment, surrounded by a large staff of well-trained personnel, a registered nurse in full attendance twenty-four hours per day, and leaves his hotel office and hotel home very infrequently.

4. In my professional opinion, Mr. Shenker is fortunate to be alive. With an original cardiac output of 24%, nine days on life support systems, long periods of unconsciousness, extensive cardiac surgery with removal of approximately 20% of his original heart muscle, triple by-pass autogenous vein grafts, and permanent pacemaker all have greatly impeded his accurate recall for past events.

5. Periods of stress, even in a protected environment, and under most favorable conditions have precipitated angina pectoris requiring the use of nitroglycerine, oxygen and bed rest.

6. I have been informed that Mr. Shenker has been requested to appear as a witness on February 24, 1982 before the United States Senate Committee on Labor and Human Resources. It is my professional opinion that Mr. Shenker's health would be seriously jeopardized, and that his being required to appear and give testimony before such Committee could be life-threatening to him, given the fact of his recent medical history. It is my professional opinion that Mr. Shenker will not improve beyond his present level.

Joseph L. Fink M.D.
JOSEPH L. FINK, M.D.

SUBSCRIBED and SWORN to before
me this 16th day of February, 1982.

Jo Anne Melland
Notary Public



MDL

MCKINNON DIAGNOSTICS, LIMITED

3196 MARYLAND PARKWAY, LAS VEGAS, NEV. 89109
(702) 735-9251

March 6, 1981

Department of Labor
P. O. Box 1014
Washington, D.C. 20013
Attn: Mr. Joseph Reyna

Re: Morris Shenker

Mr. Shenker was seen in my office on February 27, 1981, for evaluation of his cardiovascular status. He stated that he was stricken on an airplane, and subsequently hospitalized in Halifax, Nova Scotia, with a heart attack. He stated that he spent 20 days in the intensive care unit, and required the placement of an artificial pacemaker. He received circulatory support by way of balloon pump assistance.

He was subsequently transferred to the Jewish Hospital in St. Louis, where further therapeutic effort were expended. These included excision and plication of a large ventricular aneurysm and coronary bypass surgery. He again required circulatory support via balloon pump and was placed on medication calculated to maintain his myocardial function at the best possible level.

It should be made clear that the records from St. Louis have been made available and reviewed. These records show clearly that Mr. Shenker was a very sick man and required all of these procedures to enable him to survive.

When seen at this time, he presents as a very pleasant, co-operative man in his seventies who appears in reasonable health. He states that he has quite limited activity. He walks 1/2 to 1 mile daily, and is able to conduct most aspects of his business, but requires a rest period of 1 1/2 to 2 hours each day at 12:30 P.M. He indicates that on this limited activity, he does quite well. He reports having no shortness of breath, and edema and chest pain only occasionally - and most often when emotionally upset. This is always relieved with Nitroglycerine.

On examination the patient presents as a tall, slender male. His blood pressure is 102/70 on the right; 103/76 on the left. The chest reveals the site of surgical scars, and in the left anterior chest the repository site for an electronic pacemaker. The lung fields were clear, and no evidence of heart failure was suggested by ankle edema or hepatomegaly.

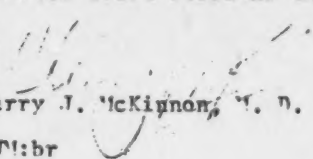
The heart appears slightly enlarged. In the recumbent position an S3 gallop can be heard. This would suggest borderline compensation of the left ventricle.

The biochemical data were all within normal ranges, including electrolytes.

The electrocardiogram reveals a functioning atrial pacemaker and evidence of an extensive anterio-apical infarct, suggestive of ventricular aneurysm. It was not materially different from the tracing of 10/23/80.

There is no doubt that Mr. Shenker remains a sick man, with a heart that has been severely damaged, and which now functions at a relatively low level of efficiency. However, he has managed, through attention to the medical program prescribed for him, to be reasonably active in his business - although his hours have been curtailed by his need of increased rest.

It would seem reasonable to expect that court appearances need not be more arduous than his current daily routine. It should be recognized that there will be a need for Mr. Shenker to continue to get more than usual rest, and that this will require shorter court sessions than is the rule.


Harry J. McKinnon, M.D.

HJM:br

The CHAIRMAN. Again, I am happy to have representatives of the Labor Department here. Mr. Ryan, welcome to the committee again. We are happy to have you here, Mr. Young. Ms. Gallagher, we are happy to have you as well.

Yesterday I was appreciative of the candor with which all of you addressed this matter. I will be equally appreciative today if we can get through this matter promptly.

Ms. Gallagher, let me ask you some questions.

**STATEMENT OF MONICA GALLAGHER, ASSOCIATE SOLICITOR,
PLAN BENEFITS SECURITY DIVISION, U.S. DEPARTMENT OF
LABOR**

Ms. GALLAGHER. Yes, Mr. Chairman.

The CHAIRMAN. As Associate Solicitor, you are responsible for directing the Labor Department's litigation against Morris Shenker in the Southern Nevada Culinary Fund. Is that correct?

Ms. GALLAGHER. Under the general direction of the Solicitor, I am responsible for all the legal services under ERISA, including the litigation that you mentioned.

The CHAIRMAN. How long have you held this responsibility in the Department?

Ms. GALLAGHER. I was officially appointed to my position in November of 1977, and I began acting in the position sometime during the summer, around Labor Day. I have tried to figure out the exact date, and I have been unable to.

The CHAIRMAN. But it was in 1977?

Ms. GALLAGHER. In 1977, yes.

The CHAIRMAN. In July 1977, you were actually acting as Associate Solicitor; is that correct?

Ms. GALLAGHER. I do not believe so, but I am not certain. I think it was around Labor Day.

The CHAIRMAN. You did succeed Mr. Stephen Scher in that position?

Ms. GALLAGHER. Yes, Mr. Chairman, I did.

The CHAIRMAN. In a March 21, 1977, memorandum to the Solicitor, Mr. Scher persuasively advocated a preliminary injunction against further payments pursuant to Mr. Shenker's loan commitments, rescission of loan agreements, restitution from all defendants, including securing their personal assets and removal of trustees. It is my understanding that you chose not to follow that course. Is that correct?

Ms. GALLAGHER. Not at all, Mr. Chairman. I prepared that memorandum or participated in the preparation of it, and I believe we followed that course.

The CHAIRMAN. So Scher did not prepare it, but you did?

Ms. GALLAGHER. I, and Mr. Allen, in my office, and perhaps others, participated in the preparation of that memorandum.

The CHAIRMAN. I see. We will call that Gallagher document No. 1 and put it in the record at this particular point.

[The material referred to follows:]

U.S. DEPARTMENT OF LABOR
Office of the Solicitor

MAR 21 1977

112
*Collector Document #1*MEMORANDUM FOR: The Solicitor
The Acting AdministratorSubject: Trustees of the Southern Nevada Culinary and
Bartenders Pension Trust et al.

We are prepared to file the attached complaint against the past and present trustees of the Southern Nevada Culinary Workers and Bartenders Pension Trust Fund (the Plan) and against Morris A. Shenker, Sierra Charter Corporation and Murrieta Hot Springs. Acting Administrator Ballard suggested commencement of such litigation, based on preliminary reports of an investigation in progress, in his memorandum of March 14, 1977. The proposed complaint alleges violations of sections 404 and 406 of ERISA in that the trustees have, since January 1, 1975, caused the Plan to loan more than \$15 million, which, together with outstanding pre-ERISA loans, constitutes more than 75% of the book value of the assets of the Plan, to two real estate development companies owned by Shenker, a party-in-interest, and members of his family. These loans, and additional commitments to lend more than \$10 million more over the next 18 months, were made when there was clear evidence that the borrowers would be unlikely to repay the loans. The complaint seeks an injunction against further payments pursuant to the loan commitments, rescission of the loan agreements, restitution from all of the defendants, and removal of trustees.

The investigation in this matter was initiated on February 15, 1977 and is not complete. However, information now available to us indicates that the Plan has since January 1976, advanced an average of approximately \$500,000 per month under the terms of an unlawful loan commitment and, if not restrained, it will continue to do so until at least September 1978. We are also informed that the trustees have considered their legal position and have determined to continue these advances because of their announced perception that Mr. Shenker may legally enforce the agreement. Accordingly we recommend the commencement of this civil action without an attempt to obtain voluntary compliance.

Background

The Plan is a collectively bargained pension plan, maintained jointly pursuant to section 302(c)(5) of the Labor-Management Relations Act, 1947, as amended, (LMRA) by Culinary Workers Union Local 226, 1/ Bartenders Union Local 165 and various Las Vegas resort hotels which employ participants. The Plan covers hourly paid employees in bargaining units represented by the two locals and employees of the unions and the Plan. According to its Form 5500, filed December 15, 1976, the Plan had 41,535 participants on December 31, 1975. The Plan reported 646 retired participants and 8,365 fully vested participants at that time. According to the Form 5500, the Plan's total assets at the end of 1975 were \$29,092,036. Our information, based on an audit which personnel from LMSA and PNBP commenced on March 7, 1977, and which is still in progress, indicates that the Plan's total assets at the end of 1976 were approximately \$42.5 million.

Murrieta Hot Springs (hereinafter "Murrieta") is a California corporation, wholly owned by Morris A. Shenker, which is engaged in real estate development in Riverside County, California. Sierra Charter Corporation ("Sierra") is a Nevada corporation which is wholly owned by Shenker and members of his immediate family and which is engaged in real estate development in Gardnerville, Nevada. Mr. Shenker owns, directly or indirectly, approximately 40% of the common stock of the Continental Connector Corporation (Connector), which wholly owns the M&R Corp., which in turn wholly owns the M&R Investment Co, Inc. an

1/ Al Bramlett, who was president of Local 226 and, Chairman of the Board of Trustees of the Plan was apparently a homicide victim. News accounts on March 18, 1977 report that his body was found buried in the desert South of Las Vegas on March 17. Bramlet was reported missing by members of his family on February 24, 1977. The circumstances of his disappearance, according to accounts in the national news media, included a telephone call on February 24 reportedly from Bramlet to one Sydney Wyman, who is employed as a consultant by the Dunes Hotel and who has been an officer of the Dunes, in which, according to quotations of Wyman, Bramlet requested \$10,000 to be delivered to a friend of Bramlet's.

employer of employees covered by the plan. Connector also wholly owns Continental California Corp., which is engaged in two joint ventures with Murrieta. These joint ventures involve the operation of a spa and golf course located on Murrieta's development and the marketing of Murrieta's land. Shenker, Connector and its subsidiaries, and Murrieta are therefore all parties in interest with respect to the plan within the meaning of ERISA section 3(14). 2/

The Pre ERISA Loans

In March and July 1973, the Plan agreed to make loans to Murrieta totalling \$7 million. The first loan, in the amount of \$2 million, was secured by mortgages on 209 subdivided lots, and the second loan, of \$5 million, is secured by undeveloped land. The interest rates for both loans may vary with prime rates to be determined annually, but may not exceed 10% for the first loan and 9% for the second. Murrieta agreed to pay only interest until 1978 for the first loan and until 1979 for the second loan, at which times principal becomes due in monthly installments until dates in 1983 and 1984 respectively, when the balance of each loan is due.

In June 1974, the Plan trustees agreed to lend \$8 million to Sierra, the funds to be advanced in several installments, the last of which was to be paid out on May 19, 1975. Pursuant to this agreement, \$7,450,000 was actually advanced. The loan agreement provided for interest at 1 1/2 points above the prime rate, but not to exceed 11%. Interest is payable monthly, and principal is payable in five equal annual payments commencing five years after the last advance from the lender. This loan is secured by mortgages on 1,360 subdivided lots and other undeveloped land in the Sierra tract near Gardnerville, Nevada. Most of this land is

2/

Sierra is not a party interest because it is a corporation only partly owned by Shenker (members of his family own the remaining shares), and Shenker's interest in the Connector subsidiary which is a contributing employer is less than 50%. Sierra does not therefore come within the definition of ERISA Section 3(14)(G).

subject to prior liens arising from assessments to retire a bond issue of the Gardnerville Ranchos Improvement District (a public entity) for the construction of such improvements as sewers and roads. These assessments are as high as \$4,300 per single residence lot in the subdivisions where the Plan has its mortgage.

The above agreements between the Plan and both Murrieta and Sierra provide for repayment of principal and interest by the borrowers' assignments of individual third party mortgages to the Plan as individual lots are sold. Upon such an assignment, the lender releases the lot in question from the lien it holds on the overall collateral.

The Post ERISA Loans and Extensions of Credit.

In July 1975, more than 6 months after the January 1, 1975 effective date of ERISA's fiduciary provisions, the Plan entered into an agreement modifying the existing loan agreement with Sierra. Sierra undertook to pay the interest payments due the Plan from Murrieta on the first (\$2 million) loan to Murrieta. The Plan agreed to lend Sierra an additional \$1,350,000, which was advanced between July and December 1975. Our information indicates that \$91,577 in interest on both Murrieta loans was unpaid on December 31, 1974 and that \$423,623 was unpaid at the end of 1975. We do not know how much delinquent interest was attributable to the \$2 million loan. Sierra's method of payment of its new indebtedness and the interest due on the Murrieta loan was to be by assignment of third party mortgages and sales agreements. Morris Shenker also gave his personal guaranty of Sierra's pre-existing and new obligations to the Plan.

On December 1, 1975, the existing Murrieta and Sierra loan agreements with the Plan were modified again. Sierra agreed to guarantee all Murrieta debts to the Plan. Interest due and owing on that date (about \$350 thousand each from Murrieta and Sierra) was to be added to the principal, to bear interest at the same rate as previously agreed for principal. Any interest thereafter unpaid was to be similarly added to principal. Repayment was agreed to be made through the same third-party paper mechanism as on the other loans.

As part of the December 1, 1975 modification agreement, the Plan agreed to lend Sierra an additional \$16 million,

an amount estimated as necessary by Sierra to sell its own real estate, to develop a marketing program for the Murrieta land which was collateral for the earlier Murrieta loans, and to meet Sierra's other corporate expenses. This new loan was to be paid out in monthly disbursements and was conditioned upon Sierra's continued compliance with the terms of the agreement, which include a requirement that it meet its sales projections. This new loan is to bear interest at 11%; repayment is to be by assignment of third party mortgages as land is sold and the loan is secured by a pledge covering all existing assets of Sierra and any assets to be acquired by Sierra in the future. In addition, Sierra agreed that the Plan "shall be entitled to a fifteen percent (15%) interest in the equity of all projects of Borrower on a pro-rata basis with Borrower of the amounts of each of said projects which is funded, in full or in part, or otherwise developed by sums obtained from lender." The meaning of this provision is not entirely clear.

On May 25, 1976, the Plan guaranteed Sierra's note payable to the Valley Bank of Nevada 3/ for \$2,450,000, and it

3/ The Chairman of the Board, Chief Executive Officer, and 9.7% stockholder of Valley Bank of Nevada is E. Parry Thomas. Thomas is also a ubiquitous figure in Continental Connector and its wholly owned subsidiaries. He is Vice-President and Chairman of the Board of Directors and of the Executive Committee of Continental and of wholly owned its subsidiary, the M & R Corporation, and is Senior Vice-President, Secretary Director and Member of the Executive Committee of M&R Corporation's wholly owned subsidiary, the M&R Investment Company, Inc., which owns and manages the Dunes Hotel and Country Club. Similarly, Valley's Vice-Chairman and a principal shareholder owning directly or indirectly approximately 20% of Valley's stock is Jerome D. Mack, who until December, 1975 was a Vice-President and Director of Continental and M&R Corporation, and was a Director of and a Member of the Executive Committee of M&R Investment Company, Inc.

has also undertaken to lend Sierra funds to settle certain litigation, and to provide for construction expenditures which Sierra intends to finance with funds made available by the development district, but which the plan is to cover in the event these funds are unavailable.

Sierra used approximately one half of the funds it received from the Plan's pre-ERISA loan for loans by Sierra to other Shenker enterprises and associates of Mr. Shenker. According to its April 30, 1975 financial statement, Sierra loaned \$3.3 million to such borrowers while it received \$7 million from the Plan. One of these loans was to Murrieta in the amount of \$1 million, most of which was advanced before the time of the July 1975 modification. As Sierra received the proceeds of the first post ERISA loan, however, it must have paid out additional funds to Murrieta, because according to Murrieta's financial statement for 21 months ending March 31, 1976, Sierra loaned Murrieta \$2.2 million during that period.

The December 1975 "Second Addendum" to the loan agreements provided that Sierra would obtain written evidence of all of its loans and extensions of credit to Shenker affiliates and that it would make no more such loans without permission from the Plan. Although our information is incomplete, we believe that the trustees have failed to exercise the power to limit Sierra's lending. In June 1976, Sierra received a \$2 million note from Volcano Cliffs, an enterprise of the F&S Land Development Corp., a real estate development company in which Shenker owns a 50 percent interest. An unaudited financial statement filed by Sierra with HUD, covering the five month period ending September 30, 1976, listed as "application of funds" during the period, increases in receivables of \$1,916,000 from subsidiary and affiliate companies, and of \$21,000 from current and former employees. The statement also referred to an increase in "other assets" of \$910,000 which was separate from "operations" and "development of lots" and otherwise unexplained. According to the unaudited statement, Sierra's receivables from affiliates at September 30, 1976 totaled \$7.4 million.

Based on a preliminary review of the Plan's books of original entry and certain legal documents setting out contingent short term commitments of the Plan to Sierra, Labor Department auditors have estimated that the Plan has loaned or committed approximately \$31 million of its present assets to Sierra and Murrieta. This estimate includes the pre ERISA loans and accrued interest on them, the post ERISA loans and accrued interest, the establishment of letters of credit for Sierra valued at approximately \$1.5 million, and commitments to pay contingent expenses which may equal as much as \$3.8 million. The estimate does not include the amounts, probably in excess of \$10 million, to be advanced in the future pursuant to the Second Addendum of December 1975. This latter estimate is based on a copy of Sierra's budget for the year ending September 30, 1977 which calls for approximately \$7 Million.

The information available to us at the time of this recommendation, based on the same preliminary review of the Plan's book is that Sierra and Murrieta have together accrued \$3,249,803 in unpaid interest which has been added to principal pursuant to the December 1975 agreement. According to this review, the only repayment of principal or interest by either borrower appearing on the Plan's books is payment of \$305,000 in interest by Murrieta in 1975, and the payment of \$476,173 in interest by Sierra in 1975.

The Plan's financial statement prepared by the accounting firm of Laventhol and Horwath for years ending December 31, 1974, and December 31, 1975 (which reported subsequent events to June 30, 1976), includes a statement that Murrieta had assigned to the Plan third party mortgages and contracts from the sale of approximately 180 lots between January and June of 1976, having an aggregate unpaid balance of \$3.4 million, and that Sierra had assigned to the Plan third party mortgages and contracts on the sale of approximately 360 lots, having an aggregate unpaid balance of \$1.7 million.

Also according to this review, none of these assignments a third party paper has been entered as repayment of principal or interest; rather, the assignments have resulted only in substitution of collateral. These assignments as collateral without application as repayment may indicate, therefore, Sierra and Murrieta are still collecting whatever payments third party purchasers may be making. However, we are unable to rely on this supposition at this stage of our investigation.

Prudence and Diversification Violations

Since January 1, 1975, the effective date of part 4 of Title I of ERISA, decisions of the Plan trustees to extend credit to Murrieta and Sierra have been subject to ERISA sections 404(a)(1)(B) and (C) which provide:

- (a)(1) ... a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and-
- (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aim [and]
- (C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

Prudence

The trustees failed to meet the prudence standard set out in section 404(a)(1)(B) because they disregarded clear and compelling evidence that Sierra and Murrieta would be unable to repay the loans. By January 1, 1975, the Plan trustees knew or should have known that both Sierra and Murrieta were delinquent in paying interest on the pre-ERISA loans. The security for the additional loans was to be mortgages on

land in Sierra's Gardnerville development, which the trustees knew or should have known was already subject to substantial prior liens held by the Gardnerville Ranchos General Improvement District; and there are some indications that Sierra was delinquent in at least some of its assessment payments to the District. Also, prior to the July 1975 loan modification, the Department of Housing and Urban Development suspended Sierra from making sales because it found substantial deficiencies in Sierra's disclosure statements under the Interstate Land Sales Registration Act. During this period of time, both Sierra and Murrieta were in extremely poor financial condition; Murrieta had a capital deficiency of \$13.9 million as of June 30, 1974 and this grew to \$21.2 million as of March 31, 1976; Sierra had a capital deficiency of over \$4 million as of April 30, 1975.

Because our investigation is incomplete, we do not know whether any evidence of real estate appraisals for land in either development was considered by the trustees when the post-ERISA loan commitments were made. We do know, however, that by 1975 neither Sierra nor Murrieta could be deemed to be new real estate developments. By 1975, both companies' actual marketing experience was available for evaluation. Both had subdivisions where all capital improvements were reported as complete in HUD filings and where lots were on the market. Neither had demonstrated any substantial success in their marketing operations which were already underway.

We expect the trustees to defend against allegations of imprudence by arguing that the poor financial condition of Sierra and Murrieta made it necessary to lend additional funds beginning in 1975 to prevent their bankruptcy and loss of the Plan's earlier loaned funds. This argument is overcome by the evidence that Sierra loaned substantial sums to Shenker associates and other Shenker enterprises as it was receiving disbursements of the pre ERISA loan from the Plan, and the trustees took no steps to require Sierra to recover these funds or to prevent Sierra from further loans of this kind after the new loans from the Plan.

Diversification

The trustees failed to meet the diversification requirement of section 404(a)(1)(C) in that the loans to Sierra and Murrieta apparently involve over \$30 million of the Plan's current assets, while the Plan's current total assets at the end of 1976 were approximately \$42 million. At the end of 1974, the Plan reported \$13,446,140 invested in real estate mortgages and total assets of \$19,764,437. At the end of 1975, according to the Plan's Form 5500 dated December 15, 1976, the Plan's total assets were \$29,092,036 while the Plan listed \$17,535,516 in mortgages, substantially all of which was accounted for by the Sierra and Murrieta loans. These loans have thus constituted a preponderance of the Plan's assets at all times since January 1, 1975, and beginning with the December 1, 1975 commitment, their growth has outpaced the growth in the Plan's total assets. The imprudence of the loans, coupled with their involvement of a preponderance of the assets of the Plan, poses a risk of loss so large that it could be fatal to the Plan.

Under section 404(a)(1)(C), the Plan trustees, beginning on January 1, 1975, were obligated to reduce the plan's investments in these mortgages to the extent possible, and the default of Sierra and Murrieta gave the Plan the legal wherewithal to do so. The trustees will have the burden of showing that their failure to foreclose on the pre-ERISA loans and their July and December 1975 commitments to lend additional funds were "clearly prudent" actions. ^{4/} Such a showing will be extremely difficult, if not impossible. Although the trustees may argue that additional investments would have been required after foreclosure to develop and market the land acquired thereby, foreclosure would have at least given the Plan 100 percent equity in the land acquired.

^{4/}

See ERISA section 404(a)(1)(C) and the ERISA (H.R.2) Conference Report discussion on burden of proof where breach of diversification is alleged. Joint Explanatory Statement of the Committee of Conference, House Report No. 93-1280, 93D Congress, 2 Session, p. 304.

Instead, the course of action followed by the trustees has made the Plan virtually the sole financial source for any development and marketing Sierra and Murrieta may be doing, but the plan has no greater interest in the land than the value of its loans and what appears to be a 15 percent equity participation provided by confusing language in the December 1975 Second Amendment.

Prohibited Transactions

Sections 406(a)(1)(B) and (D) provide:

- (a) Except as provided in section 408:
 - (1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect-
 - (B) lending of money or other extension of credit between the plan and a party in interest;
 - (D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan;

The Plan's 1975 agreements to fund accrued and unpaid interest owed by Murrieta were prohibited by section 406(a)(1)(B) because they constituted extensions of credit to a party-in-interest. Murrieta's joint venture with Continental California Corporation, a wholly owned subsidiary of Continental Connector Corporation, other subsidiaries of which wholly own the Dunes Hotel, brings Murrieta within the party-in-interest definition of section 3(14)(I), which includes any 10 percent or more joint venture with a corporation more than 50 percent of which is owned by an owner of more than 50 percent of an employer contributing to the Plan.

The Plan's loans to Sierra after January 1, 1975 are prohibited transactions within the meaning of section 406(a)(1)(D). Morris Shenker is a party-in-interest with respect

to the Plan under section 3(14)(B) because he is an officer and more than 10 percent shareholder of Continental Connector and its subsidiaries which own the Dunes, an employer the employees of which are covered by the Plan within the meaning of section 3(14)(C). Mr. Shenker and members of his immediate family own all of the stock of Sierra and therefore benefit from the loans.

These are not merely "technical" prohibited transactions. Actual conflicts of interest are demonstrable. For example, loans for the purpose of developing Sierra's real estate and meeting its obligations contribute to the potential profitability of Sierra and its ultimate dividend payments to Shenker and his family. Also, to the extent that Shenker has guaranteed the other obligations of Sierra, the Plan's loans to Sierra for the purpose of allowing the corporation to meet these obligations have the effect of relieving Shenker from having to pay these obligations.

In addition, the Plan's loans pursuant to the Second Addendum of December 1, 1975 were in part for the express purpose of financing Sierra's development of a marketing program for Murrieta's land. These loans are therefore at least in part for the benefit of Murrieta, a corporation wholly owned by Shenker, who therefore benefits as he does from loans to Sierra. Finally, the M&R Investment Company, Inc., which is a party-in-interest contributing employer, wholly owned indirectly by Connector, which is controlled by Shenker, loaned \$5 million to the Murrieta-Continental California Corp. joint venture in 1974 and 1975 and therefore has a substantial interest in, and benefits from, a marketing program of Murrieta land.

Relief

The proposed civil action would be the second in which the Secretary of Labor has proceeded against a possibly non-fiduciary borrower 5/ as well as against Plan fiduciaries for restitution of money unlawfully loaned from an employee.

5/

Shenker may be a fiduciary respecting the Plan; we don't know enough to so allege at this point.

benefit Plan's assets. This measure is justified and necessary to protect the Plan and its participants.

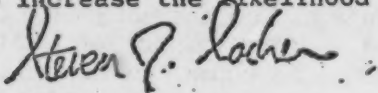
The Plan has suffered and is suffering irreparable harm as a result of its continuing payments to Sierra, and our action will be successful only if we are able to halt these payments and restore at least a portion of the funds already loaned. This will require rescission of the loan agreements, which purport to give Sierra and Murrieta contractual rights to further advances and benefits from advances. Because of their interests in the Plan's future performance under the loan agreements, which interests are to be substantially affected or possibly extinguished by the proposed relief, Sierra and Murrieta are "parties needed for a just adjudication" within the meaning of Rule 19, F.R.C.P. Morris Shenker has both received substantial benefit from and guaranteed repayment of the loans. As a party-in-interest who has engaged in prohibited transactions with the Plan, he has a duty to restore the Plan to its rightful economic position. Accordingly, he stands in essentially the same shoes as the corporate borrowers for purposes of relief.

In Stryco v. Harris (C.A. No. C-75-1831 N.D. Cal.), the Secretary intervened as a plaintiff and asserted claims against parties in interest, relying on the theory that parties-in-interest, even those who may be innocent of wrongdoing with respect to a prohibited transaction, have a duty to contribute to the restoration of the plan to its rightful economic place. Here, Morris Shenker, as principal shareholder of the borrowers and guarantor of the loans, is not free from responsibility for the prohibited transactions that are discussed above. His duty to cure the prohibited transactions is enforceable, therefore, by the Secretary's action under 502(a)(5)(A).

In September, 1976, trustees Harry Rugg and Herbert Tobman were replaced as management trustees by Richard P. Crane, Jr., Harry R. Stang and Bernard W. Henke. After taking office these new trustees have conducted an investigation of the Sierra and Murrieta loans, but have apparently decided to acquiesce in continuing the re-

lationship with these borrowers. At trustees meetings they have followed a pattern of voting for further disbursements to Sierra with a statement, repeated in the minutes upon each vote, that their votes are cast on the advice of counsel that the Plan is legally obligated to adhere to the loan agreements with Sierra. We are of the opinion that this statement is of no effect as a defense against these trustees' liability. We may argue by analogy that such a statement can have no more effect than an exculpatory clause in a trust document which clause would now be void under the provisions of section 410 of the ERISA. We propose to seek the same relief against the new trustees as against their predecessors and the three union trustees who have served since January 1, 1975.

We anticipate the necessity of seeking a preliminary injunction as soon as feasible after the proposed action is commenced to stop further advances of funds from the Plan to Sierra and to secure the personal assets of the defendants to increase the likelihood of obtaining complete relief.



STEVEN J. SACHER
Associate Solicitor
Plan Benefits Security Division

The CHAIRMAN. If you prepared and believed in that, then why did you not proceed in that manner?

Ms. GALLAGHER. In my opinion, Mr. Chairman, that is what we are doing. We are doing exactly what we undertook to do.

The CHAIRMAN. You dropped the preliminary injunction.

Ms. GALLAGHER. We got what we needed.

The CHAIRMAN. What was that?

Ms. GALLAGHER. At the time of the preliminary injunction motion, what the Department thought it needed was an independent person to take over the management of the assets and assurance that the payments to Mr. Shenker, which were averaging about \$500,000 a month, would cease. We got both of those things.

Very shortly after the complaint was filed—I think 3 days later—the trustees assured us that there would be no further payments pending the hearing on our motion. Then they assured us that they would be willing to enter into arrangements for the appointment of an independent person. That problem was resolved, as we understood it.

The CHAIRMAN. I hate to say this, but I think that is ridiculous. Because you backed off on the injunction. You did not go for the assets. I also think you abandoned a great chance of getting Shenker's assets, including The Dunes and a chance to dismiss the trustees in this case, who clearly were acting improperly under the law, as defined by your own memoranda.

For instance, the investment managers have not been supervised carefully by Labor, even though Labor is party to the stipulation appointing them under the court's order dropping the preliminary injunction.

So, in essence, the managers have blown about \$13 million since they have been appointed managers, including management of legal fees. We have also brought up a civil trial that has not even yet begun. A receiver appointed by the court under a preliminary injunction, it seems to me, would have been under the court's supervision and would not have allowed all this to happen. That is in retrospect. But do you not agree that that is a likely scenario had you decided to do that at the time?

Ms. GALLAGHER. Mr. Chairman, I think that with a receiver or with an investment manager we could not have said prospectively what that person would decide was best for the plan, and we would have been in the same position as now—second-guessing any decision made.

The CHAIRMAN. Except that the court would be supervising the second-guessing. In other words, the court would be supervising the actual guessing of this matter.

Ms. GALLAGHER. Mr. Chairman, I agree that if a receiver of that type—a bankruptcy-type receiver—had been appointed, perhaps it would have been under court supervision. I can assure you that that was never what was contemplated.

I think you can find evidence that everybody thought at the time that what we were getting was what we sought by the preliminary injunction motion.

The CHAIRMAN. I see. Why did you choose that particular course over the preliminary injunction or an effort to persuade fund trustees to call in Shenker's loan guarantees?

Ms. GALLAGHER. We chose to proceed by way of stipulation rather than by hearing on the preliminary injunction motion because it has always been our position that litigation is a means to an end. The reason we go to trial or to hearing is to accomplish some relief, and we thought that we had obtained the relief that we were seeking in that motion.

The CHAIRMAN. I see.

Part of Steve Scher's memorandum, which you claim you have written, said in the last paragraph, "We anticipate the necessity of seeking a preliminary injunction as soon as feasible, after the proposed action is commenced, to stop further advances of funds from the plan to Sierra and to secure the personal assets of the defendants to increase the likelihood of obtaining complete relief." You are aware of that paragraph?

Ms. GALLAGHER. I am aware of that paragraph.

The CHAIRMAN. OK. Mr. Kane states that, when he pressured to move against Shenker on his personal guarantees, you said Shenker's assets were all pledged up. Is that correct?

Ms. GALLAGHER. It is correct that Mr. Kane said that, and it is not correct that I said that.

The CHAIRMAN. Did you know whether or not they were pledged up at that time?

Ms. GALLAGHER. I did not know.

The CHAIRMAN. If you did not know, then would it not have been a better approach to have gone after those assets and have tied them up, forcing Shenker then, through his family and others, to have paid off the debt to the Culinary Pension Fund?

Ms. GALLAGHER. At the meeting which that memorandum describes, on July 13, 1978, all of those present were trying to explore the alternatives which were available to the Department and the best alternative to pursue.

One of the things we considered was whether it would be better to do just as you suggested at that time. Because there was no information available about the assets that might be secured, and for a lot of other reasons, it was decided not to pursue that route, and it was not decided by me, Mr. Chairman.

The CHAIRMAN. Before I even saw Mr. Shenker's alleged balance sheet or financial statements I had been reading about him for the last 10 or 15 years. About how wealthy he was and how he had gone into the Teamsters' pension fund and a number of other pension funds and had acquired and accumulated millions and millions of dollars. I think almost anybody familiar with this situation knew he owned The Dunes Hotel.

Anybody looking at this from the Department of Labor had to know at least as much as some of us who have read, "The Last Mafia," and a number of other books on this subject. It just makes me wonder why you did not proceed in all these ways.

Ms. GALLAGHER. That is true, Mr. Chairman. At the time, unfortunately, we knew a little bit more. For example, we knew that Mr. Shenker's interest in The Dunes Hotel was entirely pledged to the Central States Fund—that the Central States Fund had a prior claim on those specific assets.

The CHAIRMAN. That is true. But you also knew that he had a large family. That he owned a number of family corporations, had

many assets, was a wealthy attorney, and undoubtedly had access to other funds that may or may not have been associated with The Dunes. You have indicated that that is true. You wish you had proceeded in a different way.

Mr. Kane told the staff he showed you a financial statement that placed Shenker's net worth at more than \$33 million. Do you recall him showing you that financial statement?

Ms. GALLAGHER. I was aware of those financial statements which were unaudited and prepared by Mr. Shenker, and in which we did not have a great deal of confidence at that time in the Department.

The CHAIRMAN. It seems to me that if you saw \$33 million on a financial statement, whether unaudited or otherwise, and whether or not you had confidence in it, there ought to be something there that you ought to be able to attach that was unencumbered. Or at least put some pressure on Mr. Shenker.

Do you have any doubt in your mind—Mr. Kane had none yesterday—that Mr. Shenker, if he was really pressed, would have to come up with the money rather than lose his gambling license at The Dunes?

Ms. GALLAGHER. Mr. Chairman, I do not have any idea, I am sorry.

The CHAIRMAN. I have read a memorandum marked "Confidential," that you wrote Mr. Ian Lanoff on March 4, 1981, regarding a possible out-of-court settlement with Mr. Shenker. In it, you state that Mr. Shenker is believed to have a net equity in The Dunes Hotels and Casinos, Inc., of over \$30 million at current market prices.

When I see this and I see the financial statement Mr. Kane said he showed you or attempted to show you, I do have some difficulty understanding the actions of your division with regard to moving on Shenker's assets. Do you care to offer any other explanations on that?

Ms. GALLAGHER. Yes, I would say that our division did not take any actions with regard to moving on Shenker's assets.

The CHAIRMAN. I would have to agree with that.

Ms. GALLAGHER. We did not decide anything, Mr. Chairman.

The CHAIRMAN. OK. In a hearing on the Teamsters case before the Senate Permanent Investigations Subcommittee on September 30, 1980—let me get into that in a few minutes. In retrospect, do you think it would have been preferable to move on Shenker's guarantees rather than go the investment manager route and be saddled with the prolonged litigation you are now experiencing?

Ms. GALLAGHER. No, Mr. Chairman, I am sorry, there are several things about that that make me unable to agree straight out. First of all, Mr. Shenker's guarantees were not something that the Labor Department could move against. A plan fiduciary could move against those guarantees, and the current plan fiduciary, the Karsten Group, has done so. That issue is in litigation.

I think there were other courses of action which the Department might have pursued which might have made it more likely that the asset manager then would have proceeded. I am not certain of that.

I am not really able to say that it would have worked out better, but I hope the course that we did pursue was a responsible course.

I know the course we pursued was the course that we thought was the responsible and right course for the Department.

The CHAIRMAN. Ms. Gallagher, what is your present attitude toward cooperation between the Departments of Labor and Justice in these enforcement cases?

Ms. GALLAGHER. I think that we should cooperate totally and fully in the execution of our respective missions.

The CHAIRMAN. The idea, of course, is to preserve the assets of the fund?

Ms. GALLAGHER. That certainly has to be the Department's high concern.

The CHAIRMAN. Would you say that you cooperated effectively in allowing Justice to pursue criminal leads in this particular case?

Ms. GALLAGHER. I certainly tried to cooperate effectively. Looking in retrospect at some of the things that developed, I probably did not do that as effectively as I could have.

The CHAIRMAN. Was the Department of Justice satisfied with the degree of cooperation it was getting from Labor?

Ms. GALLAGHER. It indicated on a number of occasions that it was. It may on other occasions have indicated that it was not, and I am aware of one such occasion.

The CHAIRMAN. At least on one such occasion they indicated they were not happy. That is the letter from Assistant Attorney General Civiletti dated April 25, 1977. Mr. Civiletti complained that in this case Justice was not informed of matters obviously requiring criminal investigation until after a civil suit was filed by the Labor Department. You are familiar with that letter?

Ms. GALLAGHER. I am familiar with that letter; yes, sir.

The CHAIRMAN. Would you say that your approach to these cases has been to complete civil litigation prior to commencement of criminal enforcement and prosecutions?

Ms. GALLAGHER. No, Mr. Chairman.

The CHAIRMAN. Would you say then, Ms. Gallagher, that your top priority as a leader in this field at the Labor Department was to protect the fund assets?

Ms. GALLAGHER. Yes, Mr. Chairman.

The CHAIRMAN. Did it ever occur to you that a better way to protect those assets might be to throw in jail the people milking these assets?

Ms. GALLAGHER. Mr. Chairman, during the last administration our priorities were clearly defined by Secretary Marshall, both in an agreement with the Department of Justice and in testimony, and they were: First priority, protect the assets; second priority, remove those fiduciaries who have been responsible for misuse of the assets; and, third, make sure the bad guys go to jail.

The CHAIRMAN. Yesterday we received substantial evidence that one of the first priorities was to set substantial precedent or precedential matters in these cases, so you could define the law.

Ms. GALLAGHER. That was a substantial factor in our case selection procedure, and that was for the purpose of protecting plans and their assets.

The CHAIRMAN. Some would say that was the primary approach your particular Department was taking with regard to these cases.

Ms. GALLAGHER. I think it was a very important factor.

The CHAIRMAN. Has not your approach wiped out any possibility of criminal prosecution in the Culinary Workers case because of the statute of limitations problems resulting from the 5-year delay in getting the trial underway or lack of an effective package referral to the Justice Department?

Ms. GALLAGHER. I do not think so, Mr. Chairman. The Justice Department was in on everything we were doing from the beginning and, as far as I am aware, has known every fact about the same time that we learned of it.

The CHAIRMAN. It is my understanding that all criminal matters have been closed out, except the one referred by Mr. Young in 1982. Is that correct?

Ms. GALLAGHER. I do not know whether they have closed out those matters, Mr. Chairman.

The CHAIRMAN. Do you doubt that Mr. Shenker was milking these funds, based upon the knowledge you have about this case and information provided to you by your investigators at the Department of Labor?

Ms. GALLAGHER. I do not have any doubt that Mr. Shenker received a great deal of plan assets in transactions which were unlawful.

The CHAIRMAN. Do you have any doubt that he has misused those fund assets and has improperly used them as a result of your investigation?

Ms. GALLAGHER. Under the relevant standards, I do not think there are any ways he could have lawfully used them.

The CHAIRMAN. In other words, you have no doubt then that he unlawfully used those funds?

Ms. GALLAGHER. Right.

The CHAIRMAN. He has access to approximately 50 percent of the total funds presently in the Culinary Workers' account? They have about \$100 million, and he has assets of about \$45 million he owes them.

Ms. GALLAGHER. I am not certain how much of the \$100 million is including—

The CHAIRMAN. But it is in that general area.

Ms. GALLAGHER. But approximately; yes, Senator.

The CHAIRMAN. At the time that he borrowed what he did from the fund, it was about 65 percent of fund assets.

Ms. GALLAGHER. Yes, Mr. Chairman.

The CHAIRMAN. He has these at lower interest rates than really are prevailing interest rates as of today?

Ms. GALLAGHER. Absolutely.

The CHAIRMAN. A February 7, 1978, memo by a Labor Department compliance supervisor, Leonard L. Garofolo, recounts a meeting with enforcement people attended by two of your assistants, Judy Burkhardt and David Allen. It states there was a brief discussion about possible title 18 fraud violations in the Culinary Fund transactions.

The memo states:

The group generally agreed that though certain transactions investigated in this case may constitute Title 18 violations, the investigation was not directed in this area and very little information developed to date could actually establish criminal violations.

Why was the investigation not directed in that area, Ms. Gallagher?

Ms. GALLAGHER. The policy of the Department during the past administration was, as I understand it, for any matter with criminal implications to be referred to officials in the national office for a decision, together with the Justice Department, whether the Labor Department or Justice Department, through the FBI, would investigate the matter.

In this case I am quite sure it was decided officially and formally between the Department and the Justice Department that the Justice Department would do the investigation of criminal matters.

The CHAIRMAN. We will call that Gallagher document No. 5. I will also place in the record a January 17, 1978, Garofolo memo along the same lines as Gallagher document No. 6. So all six documents should be in the record, without objection. We will place them all in the record at appropriate points in this testimony.

[The material referred to follows:]

Collector Document #5

U.S. DEPARTMENT OF LABOR
Labor-Management Services Administration

REPORT OF INTERVIEW

Date of Interview April 7, 1977

PAUL LINDEN, member of the Board of Directors of Sierra Corporation and Representative of the CULINARY WORKERS LOCAL 226 PENSION FUND, was interviewed on the above date at about 2:00 p.m. by the undersigned Compliance Officer and Deputy Area Administrator at the offices of Sierra Charter Corporation, 2031 McDaniel Street, North Las Vegas, NV.

The undersigned advised LINDEN that examination of the books and records for 1975 and 1976 of the Corporation indicated that receivables from STANLEY L. FRANKLIN, former President of Sierra Charter Corporation of \$614,000 as of October, 1976. LINDEN stated that he was aware that FRANKLIN owed the Corporation \$614,000. He stated that this receivable was uncollectable. In addition, LINDEN stated that when FRANKLIN quit in approximately May, 1977 SHENKER agreed to pay him \$100,000. SHENKER also agreed to pay FRANKLIN a retainer of \$115,000 in the first year ending May 14, 1977 in monthly installments. SHENKER also agreed to pay FRANKLIN \$40,000 in each of the next two years starting on April 14, 1977. When questioned why SHENKER would agree to pay FRANKLIN this additional money after FRANKLIN already owed the Corporation \$614,000 which was uncollectable, LINDEN stated that FRANKLIN threatened to expose SHENKER and the whole operation of the Corporation if SHENKER did not agree to these terms. LINDEN stated that SHENKER was a frightened man and agreed to the terms. He stated that there was a formal agreement between SHENKER and FRANKLIN detailing the above and that the CULINARY WORKERS PENSION FUND had a copy of this agreement.

The undersigned advised LINDEN that they also noted that there was a receivable of 2.2 million dollars labelled MSIS. The undersigned asked if this was money owed by MORRIS SHENKER to the Corporation. LINDEN advised that this 2.2 million dollars receivable was paid to MARIETTA HOT SPRINGS. The undersigned also advised that they noted a million dollars receivable to LJK Corporation. The undersigned advised that if the Corporation is in such bad financial shape they should collect the receivables owed them from the above Corporations and individuals. LINDEN advised that he was not sure that these receivables were collectable.

LINDEN stated that just prior to the Department of Labor filing lawsuit he (LINDEN) had worked worked on an agreement with the Bank of America whereby the bank would purchase all loan paper now in the possession of the Corporation which the Corporation received from buyers of lots. In effect all money owed to the Corporation from purchase of lots would be taken over by the Bank of America and the Corporation would be reimbursed by the bank for this amount.

LINDEN advised that when SHANDA first came to the Corporation he became suspicious concerning sales of the Corporation to citizens of Mexico. According to LINDEN investigation by SHANDA developed that there sales were in fact a scam. This scam was

Robert H. Schueter
ROBERT H. SCHUETER, IMA
By *Gerald A. Bingham* C/O
Gerald A. Bingham
At Las Vegas, Nevada

Date Dictated 4/8/77

Date Transcribed 4/21/77

File No. 72-6118

This document is the property of the Labor Management Services Administration
its contents are not to be disclosed to unauthorized persons.

DO NOT DESTROY
WITNESS *Linden*
5-1-80
U. S. DEPARTMENT OF LABOR

LMSA 233 (4/77)

72-6118, WI, Paul Linden

perpetrated by ANDREW STEVENS, former Vice President of the Corporation during the time when FRANKLIN was President. This sham was carried out with the help of a real estate broker named WELTER. WELTER took over the realty firm of Blochberg & Rifken.

NOTE: The records of the Corporation indicate that \$79,000 was paid to WELTER in March, 1976. Records also indicate that \$76,000 was paid to BLONBERG in April, 1976.

LINDEN furnished the undersigned with a photocopy of memorandum from himself to DON O'LEARY dated February 9, 1977 re Preliminary Plan of Action MORRIS A. SHENKER Take Over. This document is attached.

DATE: January 17, 1978
 REPLY TO: Leonard L. Garofolo, SCC/LARO/PWBP
 ATTN OF:
 SUBJECT: Southern Nevada Culinary Pension Trust Fund
 Las Vegas, Nevada
 Case No. 71-6118

4334 Federal Building
 300 North Los Angeles Street
 Los Angeles, California 90012



Anderson-
 Gallagher

*Committee
 Document
 #20*

See 2/7/78 Memo

TO: Mr. Edward Daly
 Office of Enforcement/PWBP
 Room N 4720

On January 11, 1978 a meeting was held in the Las Vegas Federal Building at the request of the AUSA. The meeting lasted from 10:00 a.m. to 1:30 p.m. and those present were as follows:

Kenneth L. Evans, AA/LARO
 Leonard L. Garofolo, SCC/LARO/PWBP
 Warren Parker, IRS/EP/EO (San Francisco)
 James Murray, IRS/Audit (Las Vegas)
 Andy Flodine, IRS/ID (Las Vegas)
 Tom Parker, FBI (Las Vegas)
 John Bailey, FBI (Las Vegas)
 Charles Thomas, FBI (Las Vegas)
 Jack Clara, ATF (Las Vegas)
 Marrin Loewy, DOJ/Coordinator (Washington, D.C.)
 Geoff Andersen, AUSA/OC (Las Vegas)

Andersen advised the group that the purpose of the meeting was to establish a liaison between Federal agencies that had knowledge about the activities of Local Nos. 165 and 226 of the Culinary Workers located at Las Vegas. Andersen stated that he would like to see an exchange of information between the agencies on an ongoing basis and a coordinated criminal investigation. Andersen stated that he does not have a specific "target" for such criminal investigation, is trying to find "soft spots" for such investigation, and prefers not to use the Grand Jury to conduct the criminal investigation at this time.

At the request of Andersen, each agency present discussed their activities involving Local Nos. 165 and 226. The following is a brief summary of these discussions.

Department of Labor

The group was advised that the LARO/PWBP was currently involved in three civil investigations relating to fiduciary breaches under ERISA (Case Nos.

72-6118, 72-6426, and 72-6972). The group was told that our investigations into the Welfare Trust (Case No. 72-6972) and the Severance Trust (Case No. 72-6426) were being held in abeyance because of DOL litigative activity involving the Pension Trust (Case No. 72-6118). The AUSA was told of the substantive allegations involved in each case and the group was brought up to date on the litigation involving the Pension Trust including the injunction and deposing of witnesses. The AUSA was told that the litigation activities were primarily being handled by Dave Allen of the DOL Solicitor's Office and that an actual trial would probably not begin for at least one year. In response to questions as to what possible criminal violations may have occurred, the AUSA was told that the allegations could involve Title 18, Sections 664 and 1954. At the request of the AUSA, the LAEO agreed to supply EBS-1's and 5500's filed by the three Trusts. The AUSA also made a request for access to all documents and information gathered in Case No. 72-6118 (Pension Trust) and was told that authorization for such access would be requested by the LAEO from CE/PWBP.

IRS/EP/EO

The group was advised that EP/EO had not done an audit of any employee benefit plans involving the Culinary Workers. The group was advised, however, that EP/EO had withheld a final determination letter on the Pension Trust because of the DOL investigation. The EP/EO Division of the IRS advised the AUSA that it did not believe it could be of much assistance to the group in conducting a criminal investigation.

IRS/ID

Without getting into any detail, the representative of the IRS/ID stated that the agency was looking into activity involving Mr. Ashelman, a Culinary Worker Attorney.

FBI

The FBI Agents stated that they were investigating two loans through the Cincinnati Strike Force. In very general terms the Agents stated that one loan involved \$2,000,000 from the Culinary International Union to Dutch Inns and that this loan was still outstanding. The other loan involved \$700,000 from the Southern Nevada Pension Trust to Thrifty Dutchman. The Agents indicated that this loan may have been made through the assistant of the International Union and may involve a \$200,000 kickback to International President Hanley. The Agents stated that they have interviewed a Nancy Skelly and Ben Schmoutey, President of Local 226. The Agents indicated that they are currently trying to trace what happened to the monies loaned and that all relevant records have been obtained. The Agents stated

that they have recently received new allegations indicating that Schmoutey used union credit cards improperly. The Agents advised the AUSA that they would coordinate their activities with the Cincinnati Strike Force investigation.

ATF

The Agent essentially reiterated that communicated by the FBI Agents.

DOJ/Coordinator

The attorney stated that he was attending the meeting so as to learn what activities have occurred involving the Culinary Workers and that he would communicate such activity to the Cincinnati investigative unit.

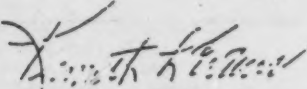
Andersen concluded the meeting by stating that DOL's main FBI contact in Las Vegas should be John Bailey and that the Agencies involved in the Culinary Workers should report back to him at the Strike Force meeting which will be held the first week in February.

At this time it appears that a number of observations are in order.

1. The AUSA is not going to wait until the DOL civil litigation in the Pension Trust is concluded before beginning a criminal investigation.
2. The AUSA is actively soliciting the assistance of the LAAO in his criminal investigation.
3. LAAO and SOL delay and/or hesitation in actively investigating and prosecuting for civil breaches under ERISA may result in the AUSA, in effect, taking the "case" away from us.
4. If an actual trial date for litigation of the Pension Trust is still more than one year away, what is the LAAO priority in the case? What is the SOL (Mr. Allen) investigative/prosecution plan? Does the SOL anticipate litigation or settlement? Without answers to these questions it is difficult for the LAAO/PWBP to determine a utilization of manpower which is consistent with OE/PWBP policy.

So as to provide the AUSA with information requested at the meeting, please provide the LAAO with copies of EES-1's and 5500's for the two most recent years for the Pension Trust (WP #260536), the Severance Trust (WP #279525) and the Welfare Trust (EIN 88-0073438). In addition, please advise the LAAO whether or not access to evidence gathered in the Pension Trust in-

Investigation will be permitted to the Las Vegas AUSA. It would be appreciated if this information could be provided within 10 days. If not, please advise accordingly.



Kenneth L. Evans
Area Administrator

cc: SFRO/PWBP
72-6118
72-6426
72-6972

LLG/ejc

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION

43
OE/PWBP
Bm N4720

DATE: February 7, 1978
REPLY TO: SCO Leonard L. Garofolo, PWBP/LAAO
ATTN OF: Culinary Workers Pension Trust
SUBJECT: Las Vegas, Nevada

4334 Federal Building
300 North Los Angeles Street
Los Angeles, California 90012

*Committee
Document
#24*



TO: Kenneth L. Evans, Area Administrator
Los Angeles Area Office

On Friday, February 3, 1978, a meeting was held in the Office of the Deputy Administrator of PWBP. The meeting was held for the purpose of discussing your memorandum dated January 17, 1978, relating to above subject matter. Those present at the meeting were as follows:

Leonard L. Garofolo, SCO/PWBP/LAAO
Edward Daly, Director/OE/PWBP
Tom Kane, Chief/BRE/PWBP
J. V. Ballard, Deputy Administrator/PWBP
Judy Burkhardt, Office of SOL/Attorney
Norman P. Goldberg, Counsel for Litigation/PBSD/SOL
Dave Allen, Attorney/PBSD/SOL

Also present at the meeting was Mr. Kane's assistant. Almost all parties present at the meeting had copies of your memo dated January 17, 1978.

Mr. Allen began the meeting by advising the group what he expects to occur in the civil litigation involving the Culinary Workers and the likelihood that the Culinary Worker Trustees will eventually accept a plan proposed to the Court by the appointed Upper Avenue Bank for the management of Pension Trust assets. Allen stated that the Trustees would probably oppose the Bank plan initially, but would eventually accept it. Allen stated that if he is incorrect a trial of the case on its merits would probably begin very shortly. Allen said that if the Upper Avenue Bank plan is accepted by the Court and the Trustees there is a very good chance that DOL will try to achieve a settlement without ever going to trial. Allen stated that non-interference by the U. S. Attorney's Office is critical to the DOL litigation efforts at this time. Allen also advised the group that he intends to take more depositions this month (February) and will need the assistance of either CO Clark or Auditor Birnbaum to conclude the audit of MHS beginning the week of February 21, 1978.

There was a brief discussion about information obtained in the investigation and how it might relate to possible violations of Title 18,

Sections 1954, 664 and 1027. The group generally agreed that though certain transactions investigated in case may constitute Title 18 violations, the investigation was not directed in this area and very little information developed to date could actually establish criminal violations.

After a discussion of the questions raised in your memo, it was agreed to do the following:

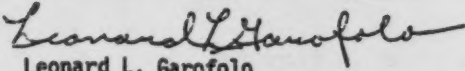
1. Make Pension Trust records/files in Case No. 72-6118 available to the AUSA (Andersen) or the FBI, but attempt to get a commitment that no hard core criminal investigation will begin for the next few months or at least 6 weeks. It was agreed that the undersigned and Allen would both call Andersen and advise him of the aforementioned. The group is aware that the AUSA may not agree to hold off a criminal investigation, but that we should try to "sell" the idea.
2. To advise the AUSA that the LAAO/PWBP could not supply any CO's/ Auditors for his criminal investigation. Mr. Ballard reiterated that to do otherwise would not be consistent with our responsibilities.

Prior to the start of the meeting Mr. Kane gave the undersigned copies of all reports filed by the Culinary Worker Trusts. It should be noted that no ERISA reports have been filed by the Pension or Severance Trusts. Mr. Kane stated that the reports are all the filings available at this time. Consistent with our agreement with the AUSA, these filings should be given to Andersen immediately.

On Monday, February 6, 1978, the Las Vegas AUSA, Geoff Andersen, was contacted telephonically by the undersigned. Andersen was told that the LAAO could not supply professionals to assist in the criminal investigation, however, that LAAO records and files would be made available to the FBI regarding the Pension Trust. Andersen stated that he would have an Agent contact me tomorrow. Insofar as the criminal investigation and the DOL civil litigation, Andersen was told that our litigation effort was at a critical stage and that a criminal investigation involving the Pension Trust could cause difficulty for us. Andersen stated that his office is not currently investigating the Pension Trust or specific transactions relating to any Culinary Trust, but may be down the road. Andersen assured the undersigned, however, that he would communicate with the DOL before actively investigating the Trusts via the Grand Jury process. Anderson was told that Dave Allen would be in contact with him

de

shortly and that reports filed by the Trusts will be delivered to him this week.



Leonard L. Garofolo
Supervisory Compliance Officer

cc: Case No. 72-6118 (48)
Case No. 72-6426 (48)
Case No. 72-6972 (48)
OE/PMBP
ARA/SFRO

The CHAIRMAN. The Garofolo memo states the group decided to advise the Assistant U.S. Attorney in Las Vegas, Mr. Geoffrey Anderson, that the Los Angeles Area Office of Labor could not supply any auditors or compliance officers for Anderson's criminal investigation of the fund. Why was that so?

Ms. GALLAGHER. I do not believe I was present at that meeting, but that would be totally consistent with the Department's thinking about the responsibility to devote its investigators first to civil matters and then, if staff strength permitted, to the criminal matters in which we could assist the Department of Justice. That was agreeable at that time to the Department of Justice.

The CHAIRMAN. Mr. Garofolo told committee staff that Mr. Allen was in charge of the meeting and that this strategy reflected his thinking. Is that your recollection?

Ms. GALLAGHER. I do not know.

The CHAIRMAN. The memorandum, which we will call Gallagher document No. 7, makes it clear that Allen did say that he was in charge. We will place that in the record, without objection, at this point.

[The material referred to follows:]

LABOR-MANAGEMENT SERVICES ADMINISTRATION

WASHINGTON, D.C. 20210



Date: March 21, 1978
 Ref. to: Thomas F. Kane, Chief
 Date of: Division of Reporting Enforcement

Subject: Southern Nevada Culinary Workers and Bartenders Pension Fund
 Las Vegas, Nevada
 Case No. 72-6118

To: Edward F. Daly, Director
 Office of Enforcement

Gallagher Document #457 7

On March 20, 1978, at approximately 3:00 p.m., there was a meeting in the Administrator's office with the following persons present:

Ian Lanoff
 Jack Ballard
 Ed Daly
 Tom Kane

Monica Gallagher (SOL)
 Norman Goldberg (SOL)
 Judy Burghardt (SOL)

This meeting discussed the need of a five-day notice to DOL and plan trustees by the Upper Avenue Bank (UAB), the Asset Manager of the captioned fund, when a transaction involving more than \$100,000 would be entered into by the UAB. The theory behind the five-day notice was twofold: (1) if Senator Nunn inquired about the UAB and its actions, DOL could respond that the actions of the UAB are being monitored by DOL, and (2) if DOL had an objection to a transaction, we could object for the record knowing that five days is too short a time to take action. It was deemed that DOL does not have the expertise or the wisdom of trained experts to present arguments against the UAB's action. Therefore, the five-day notice would not be of much use to DOL except for cosmetic purposes.

After a thorough discussion, Monica stated a vote of 5 to 2 against the five-day notice was apparent. Monica and the writer were the persons who voted to keep the Notice. The writer voted for the Notice, but desired an extension of the five days to 10 or 15 days.

Finally, it was decided by Lanoff that the Asset Management Plan submitted by the UAB to the USDC, District of Nevada, should contain this five-day notice but the phrase, "If no objection is made within said five (5) days, it is deemed a confirmation of the arrangements . . ." should be removed. Presently the plan does not have this five-day notice, but the Stipulation agreed to by DOL and the plan trustees with UAB does contain this provision. The Stipulation becomes obsolete upon acceptance of the UAB plan by the Court.

The meeting was adjourned at approximately 4:00 p.m.

W.F. 4/1/78

Observations of the Writer

Although the writer voted to keep the Notice with an additional time frame of a 10-15 day Notice, the writer, after further reflection, is against the Notice. It appears that the UAB is a fiduciary under ERISA and should be held to its duties as a fiduciary. Since DOL cannot take action within this five-day time frame, the Notice will be of no use to DOL under present circumstances. Also, the question "Is the Secretary of Labor a fiduciary because of this five-day notice?" was not answered. It is the opinion of the writer that DOL is in a position that could be very embarrassing if anything should go wrong.

Concerning the March 15, 1978, letter from the UAB regarding the property in Lincoln, Oregon, the writer is attempting to have CO Sam Clark of the Dallas Area Office travel to Chicago and obtain all details concerning this transaction. This transaction, on its face, does not appear to be in the best interest of the pension fund.

It should be noted that UAB has already paid Sierra Charter, a 100% owned subsidiary of Shenker, a sum of \$75,000. This is a fiduciary violation but UAB has applied for an exemption which has not been granted as yet.

The CHAIRMAN. The Garofolo memo goes on to state that Assistant Attorney Anderson "may not agree to hold off the criminal investigation but we should try to sell the idea." Why was your representative, Mr. Allen, attempting to hold off the criminal investigation, Ms. Gallagher?

Ms. GALLAGHER. Anything I would answer would be speculation, but I am prepared to speculate that he thought we were close to filing our civil suit or close to some development in our civil suit.

The CHAIRMAN. He had filed the civil suit, I think, a year before that.

Ms. GALLAGHER. Or some development in the civil suit. I am just not at all clear.

The CHAIRMAN. We are not talking about a trial, Ms. Gallagher; we are talking just about an investigation. Because of the statute of limitations problem, I would think you would not want Justice to incur any delays in their investigation. The trial, of course, would come later.

Let me ask you this: What possible harm could it have done to your civil litigation to have Justice proceed with a currently conducted criminal investigation?

Ms. GALLAGHER. Just to give you an example of something that has happened—and I do not think it was in this case—we have been taking depositions of witnesses in a civil case and either had a grand jury subpoena served on the same witness in the middle of the deposition, or the day before or the night before, for the record, or had a call made saying, "You are a target in a criminal case." That made it very much more difficult or, in one case I think, impossible to proceed with the piece of the civil suit that we were working on at the time.

The CHAIRMAN. Do you think that was a conscious deliberation on your part or Mr. Allen's part at that time?

Ms. GALLAGHER. To ask the Justice Department to see whether it could hold off?

The CHAIRMAN. No—that was apparent from the memorandum. But to have had the attitude that it might interrupt your depositions or your investigation, cause people to take the fifth amendment, et cetera?

Ms. GALLAGHER. I think it was our attitude that, if we could all do our jobs together, it would be ever so much better.

The CHAIRMAN. Were these matters that were touched on in the Garofolo memos—these potential fraud violations that were not even being investigated ostensibly at that time by the Labor Department—ever referred to the Department of Justice in a package referral?

Ms. GALLAGHER. Those matters were being investigated at that time by the FBI, as I understand it, and were fully handled by the Department of Justice.

The CHAIRMAN. But you did not refer it in a package referral to the Department of Justice?

Ms. GALLAGHER. No, Mr. Chairman.

The CHAIRMAN. OK. The fact that Shenker was using loan moneys for purposes not envisioned by the fund, such as bailing out his associates in his other companies, is a possible fraud violation. You would have to admit that, if those facts were true.

Ms. GALLAGHER. I have a little difficulty with the question, Mr. Chairman, because unfortunately the fund trustees had entered into arrangements with Mr. Shenker which leave almost nothing left among "purposes not contemplated by the loan document," at least in one way of reading it.

The CHAIRMAN. So you would certainly have to be concerned about fraud, the way this was done and the way he was using those funds. As you said, there is hardly anything that happened here that was not illegal.

Ms. GALLAGHER. Under ERISA.

The CHAIRMAN. Right. Well, there is fraud under ERISA, is there not?

Ms. GALLAGHER. Fraud is a crime under title 18 of the U.S. Code.

The CHAIRMAN. Right, and you can commit crimes with ERISA funds.

Ms. GALLAGHER. Absolutely.

The CHAIRMAN. OK. He used these loan moneys for purposes not envisioned by the trustees, or should I say by the fund. He bailed out his associates, other companies and pledged the same collateral for multiple loans. He did that with respect to the Murrieta properties. You are aware of that, are you not?

Ms. GALLAGHER. I am not aware of that, but I know that there were allegations to that effect, and there was consideration of pursuing those allegations.

The CHAIRMAN. OK. Another potential fraud violation is Shenker's overvaluation of loan collateral, such as assigning an \$8-million value to land worth only \$150,000, according to a memorandum from the fund consultant. Would you agree that smacks of fraud?

Ms. GALLAGHER. I am not specifically familiar with that.

The CHAIRMAN. If those facts were true as I have cited them, would you not agree that smacks of fraud?

Ms. GALLAGHER. I certainly think that those facts warrant evaluation by the criminal people; yes, Mr. Chairman.

The CHAIRMAN. I see.

Documentation that these potential fraud violations took place is contained in a July 22, 1977, report of investigation by Labor Department Compliance Officers Sam Clark and Gerald Birnbaum. Mr. Kane stated yesterday that this report went to the Department of Justice. In our opinion, it looks like a fine piece of investigative work. I do not have any doubt about it myself. Do you agree?

Ms. GALLAGHER. Yes, we were very pleased with Sam's and Gerry's work in this case.

The CHAIRMAN. OK. But I still think it falls far short of being a criminal referral, and you would have to admit that too—a package criminal referral where you actually are requesting the Department of Justice to proceed criminally in this matter.

Ms. GALLAGHER. That is not a procedure which I am familiar with. When we refer matters to the Department of Justice, it is our practice, as I understand it, to tell them the facts. We have not had occasion to try to put together a case and request that they pursue it.

The CHAIRMAN. I see. In other words, nothing was really put together neatly and compactly that brought all these matters togeth-

er, tracked down and tied altogether and sent to Justice as a package?

Ms. GALLAGHER. As far as I am aware, it was not.

The CHAIRMAN. OK. We will put Gallagher document No. 8 in the record at this point, without objection.

[Note: The material referred to appeared previously as Gallagher document No. 5.]

Callaghan Document #8

INFO. RE HECK BANKRUPTCY.

RECORDS OF U.S.D.C. Northern District of
California

① HECK was involved in a corporate bankruptcy with MC DONALD, NELSON & HECK. This action was filed in 1974 and discharged May 1975.

② HECK was involved in a personal bankruptcy that was filed May 1975. This was dismissed. no other information.

Court records re above are in the Federal Bonds Center. We did not request these records because of ③.

③ HECK was involved in a personal bankruptcy that was filed on July 30, 1976 and is still open. The documents involved in this personal bankruptcy are attached.

TELEGRAPHIC MESSAGE

NAME OF AGENCY U.S. DEPARTMENT OF LABOR LABOR-MANAGEMENT SERVICES ADMIN.		PRECEDENCE GSA TELETYPE	SECURITY CLASSIFICATION
ACCOMMODATION CLASSIFICATION		DATE PREPARED 12 Oct 78 21 57	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		PHONE NUMBER 10-12-78	
NAME Walter Slater, ARA, PWEP, SFRO		PHONE NUMBER 556-0538	
THIS SPACE FOR USE OF COMMUNICATIONS UNIT			
SFG-92		10/12/78 FAX Station 91	
MESSAGE TO BE TRANSMITTED (in double spacing and all capital letters)			
TO: FAX FAX FAX FAX FAX FAX FAX FAX			
THOMAS F. KANE OFFICE OF ENFORCEMENT, PWEP U.S. DEPT. OF LABOR, LMSA ROOM 4702- 200 CONSTITUTION AVE. WASHINGTON, D.C. 20216			
FAX FAX FAX FAX <i>Walter Slater</i> WALTER SLATER ASSISTANT REGIONAL ADMINISTRATOR FOR PWEP			
PAGE NO.		SECURITY CLASSIFICATION	
24		321	

FILED

JUL 20 1978

BANKRUPTCY CO.
OAKLAND, CALIFORNIAIN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

10 In the Matter of)

11 M. PAUL HECK,)

12 Bankrupt.)

In Bankruptcy

No. 4-76-1784 HR

13
14 ORDER SETTLING FIRST AND FINAL REPORT AND
ACCOUNT OF TRUSTEE, AND FOR PAYMENT OF FEES AND EXPENSES

15 This matter coming on regularly for hearing on July 19, 1978

16 before the undersigned Judge in his courtroom in said district,

17 and it appearing to the satisfaction of said Judge that the

18 Trustee's First and Final Report and Account is true and correct

19 in all respects and that said Trustee had on hand at the date

20 of said report and account the total sum of \$59,835.69.

21 IT IS ORDERED that the First and Final Report and Account

22 of JAMES H. RIGGS as Trustee be, and the same is hereby approved

23 and allowed and out of the moneys on hand the said Trustee is

24 hereby authorized and directed to pay the following items:

25 CLERK, U.S.D.C.

26 Judge's Salary & Expense Fund \$ 2,045.07 ✓

Extra Charges 237.50 ✓ \$ 2,282.57

27 CAROLYN ESTEVES, Crt. Reporter

25.00 ✓

28 PAUL WOLFF, Computer Services

25.00 ✓

29 JAMES H. RIGGS, Trustee's Compensation \$1,013.36 ✓

30 Trustee's Expenses 165.55 ✓ 1,178.91

31 MILTON MAXWELL NEWMARK, Atty for Trustee
Compensation

825.00 ✓

097 1c 32 //

LAW OFFICES
OF ROBERTA PIERCE
P.O. BOX 975
OAKLAND, CALIF. 94604
PHONE 284-1484

1 DEPUTY TAX COLLECTOR, ALAMEDA COUNTY
 2 Priority Tax Claim No. 9, 7,099.41

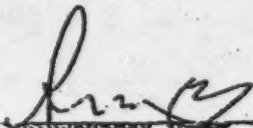
3 STATE BOARD OF EQUALIZATION, Dept. of Business
 4 Taxes, Priority Tax Claim No. 30 4,730.55

5 TO BE DISBURSED TO UNSECURED CREDITORS PURSUANT
 6 TO FURTHER ORDER OF THE COURT \$3,669.25

7 TOTAL \$59,835.69

8 All funds on hand being herein ordered disbursed this
 9 case will be in a condition to be closed on the payment thereof.

10 DATED: JUL 18 1978

11 
 12 BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

M. PAUL BECK
c/o Donald W. Curran, 1730
Franklin St., Ste 302, Oakland
Ca. 94612

Bankruptcy
No. 4-76-1784nR

NOTICE OF FINAL MEETING OF CREDITORS

TO THE CREDITORS OF THE ABOVE NAMED BANKRUPT
NOTICE IS HEREBY GIVEN that on 6/27/78

JAMES H. RIGGS, the trustee herein
filed his report and that the final meeting of
creditors will be held in Room 220 Post Office
Building, 13th & Alice Sts., Oakland, California
on JULY 19, 1978 at 9:00 A.M. for
the purpose of examining attorney's fees,
trustee's commissions and expenses, and trans-
acting such other business as may properly come
before said meeting. The following applications
for allowances have been filed:

	<u>Fees:</u>	<u>Costs:</u>
<u>James H. Riggs</u> Trustee	\$1,013.36	\$165.55
<u>M.M. Newmark</u> Atty. for Trustee	\$825.00	-0-

Trustee's report shows:

Total receipts	\$ <u>59,835.69</u>
Total disbursements	\$ <u>-0-</u>
Balance on hand	\$ <u>59,835.69</u>

CLAIMS FILED

Priority	\$ <u>11,829.96</u>
Secured	\$ <u>813.00</u>
Unsecured	\$ <u>1,472,869.96</u>

ROBERT L. HUGHES
Bankruptcy Judge
P.O. Box 2070
Oakland, Ca. 94604

Dated: 7/6/78

BANKRUPT NEED NOT ATTEND THIS HEARING

OAK.D.F. - 115

NAME OF BANKRUPT ESTATE N. PAUL HECK			CASE NO. 4-76-1784HR
CLAIM NO.	NAME AND ADDRESS OF CLAIMANT (and name and address of attorney, if any)	AMOUNT OF CLAIMS FILED & ALLOWED	CIRCUMSTANCES
1	DATE FILED: 8/16/76 KINDLER & LAUCCI 50 California St., Suite 800 San Francisco, CA 94111	FILED \$ 457.00 ALLOWED	
2	DATE FILED: 8/20/76 FLOWERS AND SONS DEVELOP., CORP. 7700 Edgewater Oakland, CA	FILED \$28,551.00 ALLOWED	
3	DATE FILED: 8/23/76 SECURITY PACIFIC NAT'L BANK 1 Embarcadero Center San Fran., Ca 94111	FILED \$ 65,481.05 ALLOWED	
4	DATE FILED: 8/24/76 GALLAGHER & BURKE, INC. 505 Oakland Commerce Bldg. Oakland, Ca 94612	FILED \$ 320.50 ALLOWED	
5	DATE FILED: 8/26/76 DAILEY CHEVROLET CO. 110 E. 14th St. San Leandro, Ca 94577	FILED \$ 1722.48 ALLOWED	
6	DATE FILED: 8/27/76 SCOTT-BUTNER CORP. 896 Isabella Street Oakland, Ca	FILED \$ 34,329.70 ALLOWED	
7	DATE FILED: 8/30/76 Allan automatic sprinkler 390 Bayshore Blvd. San Fran., Ca	FILED \$37,714.77 ALLOWED	
8	DATE FILED: 8/30/76 CONTINENTAL COMPUTER COLLECTIONS, INC. 9900 Lakewood Downey, Calif.	FILED \$483.81 ALLOWED	
9	DATE FILED: 8/31/76 DEPUTY TAX COLLECTOR ALAMEDA COUNTY County Courthouse Oakland, Calif.	FILED \$ 7099.41 ALLOWED	PRIORITY

NAME OF DEBENTUREE/CLAIMANT			NOTES NO.
M. PAUL HECK			4-76-1784HR
CLAIM NO.	NAME AND ADDRESS OF CLAIMANT (and name and address of attorney, if any)	AMOUNT OF CLAIMS FILED AND ALLOWED	REMARKS
19	DATE FILED: 10/15/76 BANK OF AMERICA NT & SA 315 Montgomery, Rm 1430 San Fran., Ca 94137	FILED \$ 10,964.60 ALLOWED	
20	DATE FILED: 10/28/76 HIGHLAND ENTERPRISES, INC. Box 8877 So. Lake Tahoe, Calif.	FILED \$ 2691.70 ALLOWED	
21	DATE FILED: 11/17/76 NAT'L ACCOUNT SYSTEMS, INC. 9 First Street San Fran., Ca 94105	FILED \$ 226.52 ALLOWED	
22	DATE FILED: 11/18/76 ROMAK IRON WORKS 3250 Hollis Street Oakland, Ca	FILED \$ 72,811.45 ALLOWED	
23	DATE FILED: 11/19/76 MARSH-KENT CORP. 552 Market St. San Fran., Ca	FILED \$ 3031.20 ALLOWED	
24	DATE FILED: 11/26/76 KATHERINE PHILLIPS, Joan M. Love, executrix 2039 Taraval San Fran., Ca	FILED \$ 289.00 ALLOWED	
25	DATE FILED: 12/3/76 COLLECTION SERVICE, INC. 337 17th Street Oakland, Ca. 94612	FILED \$ 1244.13 ALLOWED	
26	DATE FILED: 12/17/76 JOHN P. FORBES & COMPANY 111 Sutter St. San Fran., Ca	FILED \$ 950.00 ALLOWED	
27	DATE FILED: 1/10/77 TITLE INSURANCE OF MINNESOTA 460 California St., Ste 1100 San Fran., Ca	FILED \$ 257,331.00 ALLOWED	

NO.	DATE FILED	AMOUNT	REMARKS
10	9/27/76	\$ 613.00	SECURED
CHAMBERLAIN OF CALIFORNIA, INC. 2041 E. 14th St. Oakland, Ca 94606		FILED	
11	9/7/76	\$ 873.00	
J d1 CRISTINA & SON 350 Treat Avenue San Fran., Ca		FILED	
12	9/8/76	\$ 1162.50	
MERCHANTS COLLECTION ASSN. 760 Market St. San Fran., Ca		FILED	
13	9/9/76	\$ 109,197.00	
MARVIN GARAGE CORP. 460 Francisco Street San Fran., Ca		FILED	
14	9/20/76	\$ 4762.37	
AMERICAN DISTRICT TELEGRAPH Co. 1624 Franklin St. Oakland, Ca		FILED	
15	9/24/76	\$ 523,971.12	
CARLSBERG INDUSTRIAL PROPERTY FUND 1801 Century Park West Los Angeles, Ca 90067		FILED	
16	9/27/76	\$ 2600.00	
OPDS ENGINEERS 1620 Montgomery Street San Fran., Ca		FILED	
17	9/29/76	\$ 17,331.76	
BROECK, PHLEGER & HARRISON 111 Sutter St. San Fran., Ca 94104		FILED	
18	10/15/76	\$ 30,000.00	
UNITED CALIFORNIA BANK OF SAN FRAN 405 Montgomery San Fran., Ca		FILED	

1751 Capitol Mall, Ste 431 Sacramento, Ca. 95814		
29	DATE FILED 1/17/77	
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD 555 Capitol Mall, Ste 855 Sacramento, Ca. 95814		
30	DATE FILED 1/17/77	
STATE BOARD OF EQUALIZATION DEPT. OF BUSINESS TAXES - IN P.O. Box 1799 Sacramento, Ca. 95808		
31	DATE FILED 1/25/77	
IRVING J. KORNFIELD 125 12th St., Ste 153 Oakland, Ca. 94607		
32	DATE FILED 1/26/77	
RALPH JONES P.O. Box 471 Livermore, Ca.		
33	DATE FILED 2/17/77	
FURNITURE GALLERY 310 7th Street San Fran., Ca.		
34	DATE FILED 2/17/77	
ARTHUR A. GORDON 10 Littlewood Drive Piedmont, Ca. 94611		
35	DATE FILED 2/23/77	
C. EDWARD NELSON 1220 Begler Avenue San Leandro, Ca. 94577		
36	DATE FILED 2/23/77	
MARGARET LAUREL NELSON 1220 Begler Avenue San Leandro, Ca. 94577		

United States District Court

For the NORTHERN

District of

CALIFORNIA

In re

M. PAUL HECK

FILED

DEC 15 1976

Bankruptcy No. 4-76-1784HR

Bankrupt *

BANKRUPTCY COURT
OAKLAND, CALIFORNIA

DISCHARGE OF BANKRUPT

It appearing that the person named above has filed a petition

commencing a case under the Act on

7/30/76

was duly adjudged a bankrupt and that no complaint objecting to the discharge of the bankrupt was filed within the time fixed by the court (or that a complaint objecting to discharge of the bankrupt was filed and, after due notice and hearing, was not sustained); it is ordered that

1. The above-named bankrupt is released from all dischargeable debts.
2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the bankrupt with respect to any of the following:
 - (a) debts dischargeable under § 17a and b of the Bankruptcy Act;
 - (b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2) and (4) of § 17a of the Act;
 - (c) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clause (5) of § 17a of the Act, except those debts on which there was an action pending on the date when the petition was filed as specified above in which a right to jury trial existed and a party has either made a timely demand therefor or has submitted to this court a signed statement of intention to make such a demand;
 - (d) debts determined by this court to be discharged under § 17e(3) of the Act.
3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process to collect such debts as personal liabilities of the above-named bankrupt.

Dated: 12/15/76

Or. Wolfe
Bankruptcy Judge

* Include all names used by bankrupt within last 8 years.

JAMES H. RIGGS, Trustee herein, represents that he disposed of assets disclosed in Bankrupt's B Schedule as follows:

<u>Schedule</u>	<u>Asset</u>	<u>Disposition</u>
B-1	Real property in Iowa	liquidated
B-2	Household goods, supplies and furnishings	exempt
	Wearing apparel, jewelry etc	exempt
	Unliquidated claims no value	abandoned
	Shares, Macdonald, Nelson and Heck no value	abandoned
B-3	Claim against Eurovest Ltd. Cayman, Ireland Grand Bahamas no value	abandoned
B-2	1969 Lincoln Continental	exempt

PRIORITY \$ 11,829.96

SECURED \$ 813.00

UNSECURED \$1,472,869.96

Print name of debtor in full on this line.

ADJUDICATED

United States District Court for the NORTHERN

District of CALIFORNIA

In re

FILED

M. PAUL HECK

Bankruptcy No.

Bankrupt include here all names used by bankrupt within last 6 years

U.S. Bankruptcy Court
San Francisco, California

By *[Signature]*

4 76 1784 HR

VOLUNTARY PETITION

1. Petitioner's post-office address is c/o Donald W. Curran, Esq., 1730 Franklin Street, Suite 302, Oakland, CA 94612.
2. Petitioner has resided (or has had his domicile or has had his principal place of business) within this district for the preceding 6 months (or for a longer portion of the preceding 6 months than in any other district).
3. Petitioner is qualified to file this petition and is entitled to the benefits of the Bankruptcy Act as a voluntary bankrupt.

Wherefore petitioner prays for relief as a voluntary bankrupt under the Act.

Signed:

Attorney for Petitioner

DONALD W. CURRAN

Address: 1730 Franklin St.

Oakland, Ca. 94612

465-8018

Petitioner

State of CALIFORNIA

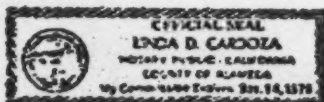
County of ALAMEDA

1. I, M. PAUL HECK, the petitioner named in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief.

PAUL HECK

Petitioner

Subscribed and sworn to before me on



[Signature]
Linda D. Cardoza
Notary Public

If after further time is granted to the Court pursuant to Rule 301, this petition shall be a sworn statement of the debtor's debts and property, and shall be a sworn statement of the debtor's assets. These additional statements shall be submitted on official forms, shall include the information about the petitioner's property and debts as required by the Bankruptcy Act and shall be submitted under oath.

1. Bank accounts and safe deposit boxes.

a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name, within the 2 years immediately preceding the filing of the original petition herein?

Give the name and address of each bank, the name in which the account was maintained, and the name and address of every person authorized to make withdrawals from such account.

b. What safe deposit box or boxes or other depositories or repositories have you kept or used for your securities, cash, or other valuables within the 2 years immediately preceding the filing of the original petition herein?

Give the name and address of the bank or other depository, the name in which such box or other depository was kept, the name and address of every person who had the right of access therein, a description of the contents thereof, and, if the box has been opened, under what circumstances or if transferred, where transferred and the name and address of the transferee.

2. Property held for another person.

What property do you hold for any other person?

Give name and address of such person, and describe the property, the amount or value thereof and all writings relating thereto.

3. Prior bankruptcy proceedings.

What proceedings under the Bankruptcy Act have previously been brought by or against you?

Give the location of the bankruptcy court, the terms and conditions of the proceedings, and whether discharge was granted or not, and if the proceedings were dismissed, or a composition arrangement, or plan was confirmed.

10. Receiverships, general assignments, and other modes of liquidation.

a. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver, trustee, or other liquidating agent?

If so, give a brief description of the property and the name and address of the receiver, trustee, or other agent, and, if the agent is appointed in a court proceeding, the name and location of the court and the nature of the proceedings.

b. Have you made any assignment of your property for the benefit of your creditors, or any general assignment while your creditors, within the 2 years immediately preceding the filing of the original petition herein?

If so, give date, the name and address of the assignee, and a brief statement of the terms of assignment or assignments.

11. Property in hands of third person.

Is any other person holding anything of value in which you have an interest?

Give name and address, location and description of the property, and circumstances of the holding.

12. Sales, assignments, and attachments.

a. Were you a party to any sale pending at the time of the filing of the original petition herein?

If so, give the name and location of the court and the title and nature of the proceedings.

b. Were you a party to any sale terminated within the year immediately preceding the filing of the original petition herein?

If so, give the name and location of the court, the title and nature of the proceedings, and the result.

c. Has any of your property been attached, garnished, or seized under any legal or equitable process within the 2 years immediately preceding the filing of the original petition herein?

If so, describe the property seized or person arrested, and at the time.

13. Payments on loans and installment purchases.

a. What payments on loans in whole or in part, and what payments on installment purchases of goods and services, have you made during the year immediately preceding the filing of the original petition herein?

Give the name and address of the person receiving payment, the amount of the loan and of the purchase price of the goods and services, the date of the original transaction, the maturity and date of payment, and, if any of the payments are paid in installments, if the borrower is a partnership and any of the partners is or was a partner or a relative of a partner, state the partnership; if the borrower is a corporation and any of the officers is or was an officer, director, or shareholder, state the relationship of an officer, director, or shareholder, state the relationship.

14. Transfers of property.

a. Have you made any gift, other than ordinary and usual presents to family members and charitable donations, during the year immediately preceding the filing of the original petition herein?

If so, give name and address of donee and from, description, and value of gift.

b. Have you made any other transfer, whether or not the purpose of recovery, or any other disposition which was not in the ordinary course of business during the year immediately preceding the filing of the original petition herein?

Give a description of the property, the date of the transfer or disposition, to whom transferred or to whom disposed of, and under what the transferee is a partner, partner, director, officer, or shareholder, the consideration, if any, received for the property, and the disposition of such consideration.

United California Bank

2040 Franklin Street, Oakland, CA 94604

Bank of America

345 Montgomery Street, San Francisco, CA 94120

None

None

Chapter XI Bankruptcy Act this court proceeding
No. 4743022. Dismissed

None

No

No

Yes (See page 2a)

Real Estate Loans only (See page 2b)

No

Deposited sum of \$60,000.00 with Zurovest, Co.,
Cayman, Ireland, Grand Bahamas on account of
finders fee to obtain loan.
\$20,000.00 deposited with International Travel
& Finance, 717 Bay Street, San Francisco, Calif.

UNITED STATES DISTRICT COURT
for the NORTHERN District of CALIFORNIA

Official Form No. 8

IN RE

M. PAUL HECK

Bankruptcy No.

Bankrupt.

(include here all names used by bankrupt within last 6 years)

STATEMENT OF AFFAIRS FOR BANKRUPT ENGAGED IN BUSINESS

Each question should be answered as the filer is answer required. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet, properly identified, and made such format, should be used and attached.

If the bankrupt is a partnership or a corporation, the questions shall be directed to be answered to, and shall be answered on behalf of, the partnership or corporation; and the statement shall be verified by a member of the partnership or by a duly authorized officer of the corporation.

The term, "original petition," as used in the following questions, shall mean the petition filed under Bankruptcy Rule 100, 104, or 105.

1. Nature, location, and name of business.

a. Under what name and where do you carry on your business?

M. Paul Heck - Real Estate Developer
c/o Donald W. Curran, Esq.
1730 Franklin, #302, Oakland, CA 94612

Unemployed

Upon adjudication of MacDonald, Nelson & Heck as a bankrupt

MacDonald, Nelson & Heck, 2150 Valdez
Oakland, CA 94612

Social Security No. 346-22-8749

2. In what business are you engaged?

a. When questions have been answered, give the date of retirement?

b. When did you commence such business?

c. When did you, and under what other names, last you carried on business within the 6 years immediately preceding the filing of the original petition herein?

d. What is your employer identification number? Your retail security number?

3. Books and records.

a. By whom, or under whose supervision, have your books of account and records been kept during the 2 years immediately preceding the filing of the original petition herein?

b. Give names, addresses, and details of time.

c. By whom have your books of account and records been retained during the 2 years immediately preceding the filing of the original petition herein?

d. Give names, addresses, and dates of retention.

e. In whose possession are your books of account and records?

f. Give names and addresses.

4. If any of these books or records are not available, state:

a. Have any books of account or records relating to your debt been destroyed, lost, or otherwise disposed of within 2 years immediately preceding the filing of the original petition herein?

b. If so, give particulars, including date of destruction, loss, or the date, and reason therefor.

5. Financial statements.

a. Have you issued any written financial statements within 2 years immediately preceding the filing of the original petition herein?

b. Give date, and the names and addresses of the persons to whom sent, including mortgage and trade accounts.

6. Inventories.

a. When was the last inventory of your property taken?

b. By whom, or under whose supervision, was this inventory taken?

c. What was the amount, in dollars, of the inventory?

d. What was the date, in dollars, of the inventory?

e. When was the next prior inventory of your property taken?

f. By whom, or under whose supervision, was this inventory taken?

g. What was the amount, in dollars, of the inventory?

h. State whether the inventory was taken at cost, market, or otherwise.

i. In whose possession are the records of the 2 inventories last referred to?

j. Give names and addresses.

7. Income other than from operation of business.

a. What amount of income, other than from operation of business, have you received during each of the 2 years immediately preceding the filing of the original petition herein?

b. Give particulars, including such source, and the amount received.

8. Tax returns and refunds.

a. In whose possession are copies of your federal and state income tax returns for the 2 years immediately preceding the filing of the original petition herein?

b. What tax refunds (income or other) have you received during the 2 years immediately preceding the filing of the original petition herein?

c. To what tax refunds (income or other), if any, are you now or may you be, entitled?

d. Give particulars, including information as to any refund payable to you and your spouse or any other person.

John P. Forbes
111 Sutter Street
San Francisco, CA 94104

None

M. Paul Heck, c/o Donald W. Curran, Esq.
1730 Franklin St., #302, Oakland, CA 94612
No

Yes
Unknown

None

None

M. Paul Heck, c/o Donald W. Curran, Esq.
1730 Franklin St., #302, Oakland, CA 94612

None

None

U.S. District Court for the Northern District of California

UNITED STATES DISTRICT COURT
for the NORTHERN District of CALIFORNIA

IN RE

M. PAUL HECK

Bankrupt.

Bankruptcy No. _____

(Include here all names used by Debtor within last 6 years)

Statement of Affairs Official Form 6 - 1993 (page 4)

13. Any other indebtedness

Have you acquired other indebtedness as a debtor, for or on account of, or other indebtedness during the year commencing the filing of the original petition herein? If so, give names and addresses of creditors.

No

14. Repossession and return

Have any property been sold or a repossession or return made to a secured party during the year commencing the filing of the original petition herein? If so, give particulars including the name and address of the party getting the property and the description and value.

No

15. Debtor's loans

If you are a member of business group, etc., what are the name and address of your husband the amount of loan made the date on which was first paid and at the time or the filing of the original petition herein, and the amount of security held by the husband?

None

16. Loans

a. Have you suffered any loans from friends, relatives, or guaranty during the year immediately preceding the filing of the original petition herein? If so, give particulars including date, name, and place, and the amounts of money or value and general description of property loaned.

b. Was the loan covered in whole or part by insurance? (If so, give particulars)

None

17. Withdrawals

a. If you are an individual proprietor of your business, what personal withdrawals of any kind have you made from the business during the year immediately preceding the filing of the original petition herein?

b. If the business is a partnership or corporation, what withdrawals, in any form (including compensation or salary) have been made by any member of the partnership, or by any officer, director, managing executive, or shareholder of the corporation, during the year immediately preceding the filing of the original petition herein? Give the name and designation or relationship to the business of each person, the date and amount of withdrawal, and the nature or purpose thereof.

18. Payments or transfers to attorneys

a. Have you ever paid or transferred during the year immediately preceding or after the filing of the original petition herein? Give date, name, and address.

b. Have you during the year immediately preceding or after the filing of the original petition herein paid any money or transferred any property to the attorney, or to any other person in his behalf?

If so, give particulars including amount paid or value of property transferred and date of payment or transfer.

c. Have you either during the year immediately preceding or after the filing of the original petition herein agreed to pay any money or transfer any property to an attorney at law, or to any other person on his behalf? If so, give particulars including amount and terms of obligation.

d. If the business is a partnership or corporation, the attorney's name and address should be furnished.

Yes

Donald W. Curran, Esq.
1730 Franklin St., #302
Oakland, CA 94612

No

Revised 1973, Bankruptcy Rules and Forms, Appendix A, Form B-1

UNITED STATES DISTRICT COURT

for the NORTHERN District of CALIFORNIA

IN RE

N. PAUL HECK

Bankrupt.

(Include here all names used by bankrupt within last 6 years)

Bankruptcy No. _____

Statement of Affairs Official Form B - 1973 (page 3)

21. Members of partnership, officers, directors, managers, and principal stockholders of corporation

a. What is the name and address of each member of the partnership, or the name, title, and address of each officer, director, and managing executive, and of each stockholder holding 25 per cent or more of the issued and outstanding stock, of the corporation?

None

b. During the year immediately preceding the filing of the original petition herein, has any member withdrawn from the partnership, or any officer, director, or managing executive of the corporation terminated his relationship, or any stockholder holding 25 per cent or more of the issued stock disposed of more than 50 per cent of his holdings? If so, give name and address and reason for withdrawal, termination, or disposition, if known.

c. Has any person acquired or disposed of 25 per cent or more of the stock of the corporation during the year immediately preceding the filing of the petition? If so, give name and address and particulars.

STATE OF CALIFORNIA

County of ALAMEDA

I, N. Paul Heck, do hereby swear that I have read the answers contained in the foregoing statement of affairs and that they are true and complete to the best of my knowledge, information, and belief.

M. Paul Heck
M. Paul Heck

Bankrupt

Subscribed and sworn to before me on _____



Linda D. Cardoza

(Official character)

(Persons verifying for partnership or corporation should indicate position or relationship to bankrupt.)

A-1 SUPPLEMENT

**Franchise Tax Board
1025 P Street
Sacramento, CA 95814**

**State Development Department
800 Capitol Mall
Sacramento, CA 95814**

Tax Collector, County of Alameda

Schedule A-2—Creditors Holding Security

Name of owner and residence or place of business (if different, so stated)	Description of security and date when obtained by owner	Maturity when due or date of sale and the consideration therefor, or an entry in the statement, which cannot, however, be made, indicating by a statement, under this heading, the nature of the security, or the date of sale and the consideration, or the date of maturity, or the date of sale and the consideration, or any other information which may be pertinent to the security or the sale thereof	Market value	Amount of price actually received, or the date of maturity
1. Western Electric Building - Estimated Value 109th & Prairie Avenue Urbandale, Iowa (See Schedule B-1) Equity of Redemption <u>Holder of First Deed of Trust</u> Prudential Insurance Company Eastern Real Estate Service Office P. O. Box 595 Fort Washington, Pennsylvania 19034 (See Schedule B-1 for description)				675.00 602,000.00
Total				602,000.00

Schedule A-3 — Creditors Having Unsecured Claims Without Priority

Name of creditor (including full name holder of any payable instrument) and residence or place of business (if unknown, no entry)	Amount owed by debtor and the corresponding funding, when claim is con- firmed, acknowledged, liquidated, subject to a lawsuit, confirmed by a lawsuit, con- firmed, subject to a lawsuit or intended to submit to a lawsuit, or include, usually some of any terms or just certificate or any field	Amount of claim
American District Telegraph Company, P. O. Box 44416, San Francisco, CA 94144		4,562.37
American Star Insurance, c/o Kindler, Laucci & Day, 320 California St., San Francisco, CA 94104		411.29
BankAmericard, Box 37039, San Francisco, CA 94191		9,739.80
Conklin Brothers, 126 Hyde St., San Francisco, CA 94102 and Commercial Recovery Inc., 126 Hyde St., San Francisco, CA 94102		835.67
Bailey Chevrolet Company, 150 E. 14th St., San Leandro, CA 94577		300.37
Arthur E. Elliott A.C.S.W., 2976 Summit St., Oakland, CA 94609		430.00
George L. Fawcner, Inc., 9401 Earhart Rd., Box 244, Oakland, CA 94614		387.00
First Leasing Corporation, Drawer L., Alameda, CA 94501		2,100.00
Foremost Dairys, 22990 Clawiter Road, Hayward, CA 94545		288.83
John F. Forbes & Company, 111 Sutter St., San Francisco, CA 94104		950.00
East Bay Neurological Medical Group, Inc., Lake Chapot Rd., Castro Valley, CA 94546		393.50
	Total	20,398.73

Schedule A-3 — Creditors Having Unsecured Claims Without Priority

Name of creditor (and location of any assets not exempted) and the amount or value of claims due or owing to, or for, the estate	If any claim was allowed and the creditor has received or is entitled to receive, or is to receive, a dividend, the amount of such dividend, or the amount of such dividend as it is entitled to receive, or is to receive, as a dividend, or the amount of such dividend as it is entitled to receive, or is to receive, as a dividend	Amount of claim
O'Donoghue & Burke, Inc., 505 Oakland Commerce Bldg., Oakland, CA 94611		296.00
Generators Unlimited, 3367 India St., San Diego, CA 92103		199.36
Howard C. Hall, 508 - 16th St., Oakland, CA 94612		500.00
Harvey's Resort Hotel, P. O. Box 128, Stateline, Nevada 89449		500.00
Heald Colleges, 1255 Post Street, San Francisco, CA 94109		525.00
Harbor Island Marina, 2040 Harbor Island Dr., San Diego, CA 92101 and Atty. Leo J. Jensen, P. O. Box 783, San Diego, CA 92112		918.88
Imperial Welding, 1 Imperial Ave., Monte Vista, CA 95014		304.91
Jack Wagle Tire and Brake Service, 21739 Mission Blvd., Hayward, CA 94541		250.24
Marsh Kent, 582 Market St., San Francisco, CA 94104		2,618.75
Don Plummer Chevrolet, 1814 - 1st St., Livermore, CA		2,500.00
Kindler, Laucelli & Day, 320 California St., San Francisco, CA 94104		2,871.00
Delma L. Heskett, 148, Hegenberger Court, Oakland, CA 94631		4,526.00
Merchants Collection, Phelan Bldg., Suite 900, San Francisco, CA		1,162.60
Mr. Limousine, 634 Church St., San Francisco, CA 94114		289.00
Macy's of California, P. O. Box 3487 Rincon Annex, San Francisco, CA 94119 and Kenneth S. Carey, Phelan Bldg., San Francisco, CA 94102		723.62
Mortenson's Carpet Sales, 10115 San Leandro, CA 94603		813.40
A. Rodney Nurse, Ph.D., 2976 Summit St., Oakland, CA 94609		230.00
Outdoorsman, P. O. Box 8877, So. Lake Tahoe, CA 95705		2,089.85
Robinson's (Citizens Credit Exchange - 2039 North D Street, San Bernardino, CA 92405)		208.55
Royal Exchange Assurance Company, c/o Graham & Simon, P. C., 150 Broadway, N.Y., N.Y. 10038		1,071.00
Mel H. Binning, Inc., 1247 Bancroft Avenue, San Leandro, CA 94577		362.81
P. Miller Thornburg, M.D., 2811 Castro Valley Blvd., Castro Valley CA 94546		170.00
U. C. Liquor, 1216 Park St., Alameda, CA 94501		263.40
Union Oil Company, P. O. Box 50076, San Francisco, CA 94158 and Harbor Detectives, 300 N. Newport Blvd., Newport Beach, CA 92660		1,131.13
Total		28,475.59

.. PAUL HECK - Bankruptcy No.

SCHEDULE A-3 Continued

Travel Services, Inc., 100 Bush Street, San Francisco, CA 94104	\$
United California Bank, 2040 Franklin Street, Oakland, CA 94604	10,312.50
Victor H. Werlhof, 6151 Freeport Blvd., Sacramento, CA 95822	251.00
Yacht Services, Inc. 2726 Shelter Island Dr., San Diego, CA 92106 and Continental Account Servicing House, Inc., 1316 Brookhurst St., Garden Grove, CA 92643	7,079.94
D. Zelinsky & Sons, 975 Bryant St., San Francisco, CA 94103	4,995.30
	<u>\$22,638.74</u>
TOTAL	\$67,513.06

ATTACHED HERETO AND MARKED SCHEDULE A-3(1) ARE OBLIGATIONS
OF MAC DONALD, NELSON & HECK, INC. WHICH DEBTOR CONSIDERS
CONTINGENT LIABILITIES

PERSONAL LAWSUITS

Harwin Garage Corp. vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

L. J. Kruse Co. vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

Bank of America vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

Kadare Louise French Laundry vs.
Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

James A. Nelson Co., Inc. vs.
Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

Rolf's since 1950 vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

Engeo, Incorporated vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

J. Lee vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

Bill Graham vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

Security Pacific National Bank
vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

Ralph Jones vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

County of Alameda vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

Francesco's Restaurant vs. Paul
Heck
Alameda County Municipal Court
660 Washington Street, Oakland CA

Scotti-Dentner Corp. vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

Landluts Collection Association
vs. Paul Heck
Alameda County Municipal Court
660 Washington Street, Oakland CA

PERSONAL LAWSUITS (Continued)

Charles Mack vs. Paul Heck
El Dorado Municipal Court

State Board of Equalization
vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

Stivers & Sons Development Corp.
vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

Travel Service, Inc. vs. Paul
Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

Corisham Industrial Property
vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

P. Samuel vs. Paul Heck
Alameda County Superior Court
1225 Fallon Street, Oakland CA

Royal Exchange Assurance of America, Inc.
vs. Paul Heck
Alameda County Municipal Court
600 Washington Street, Oakland

H. Coster Enterprises, Inc.
vs. Paul Heck
Santa Clara Superior Court

American District Telegraph Co.
vs. Paul Heck
San Francisco County Municipal
Court

B-2 SUPPLEMENT

Claim against Kindler, Laucchi & Day
for elimination of all risk rider on
course of construction insurance
Personal losses estimated at

\$350,000.00

Claim against Edward Nelson and
Graeme W. MacDonald. Christopher W.
MacDonald for fraud - Estimated
losses

\$1,250,000.00.

Claim against Mike Darrin
on Spring Creek tract, Mattole Drive,
South Lake Tahoe.

\$9,000.00

Claim against Eurovest, Ltd., David Kaplan,
Walter Stradley, David Gorowitz and Senator
Richard Dolwig, et al., plus for fraud.
Includes any cash expended.

\$103,000.00

Claim against International Trade &
Finance, Barbara Barnato Abe Chapman
and Paul Axelrod for cash plus damages
for fraud.

\$30,000.00

\$1,427,000.00

0. *
1,250.0000 +
103.0000 +
30.0000 +
1,383.0000 *

Other information on the bankruptcy in schedules A and B.

SCHEDULE		DEBTS AND PROPERTY		TOTAL
DEBTS				
Schedule A -	1 a	Wages having priority		None
Schedule A -	1 b(1)	Taxes owing United States		None
Schedule A -	1 b(2)	Taxes owing States		None
Schedule A -	1 b(3)	Taxes owing other taxing authorities		None
Schedule A -	1 c(1)	Debts having priority by laws of the United States		None
Schedule A -	1 c(2)	Debts having priority under State law		None
Schedule A -	2	Secured claims		\$602,000.00
Schedule A -	4	Unsecured claims without priority		67,513.06
Schedule A total				\$669,513.06
PROPERTY				
Schedule B -	1	Real property (total value)		\$1,138,600.00
Schedule B -	2 a	Cash on hand		None
Schedule B -	2 b	Deposits		1,431,600.00
Schedule B -	2 c	Household goods		2,500.00
Schedule B -	2 d	Books, pictures, and collections		None
Schedule B -	2 e	Wearing apparel and personal possessions		1,500.00
Schedule B -	2 f	Automobiles and other vehicles		800.00
Schedule B -	2 g	Boats, motors, and accessories		None
Schedule B -	2 h	Livestock and other animals		None
Schedule B -	2 i	Farming supplies and implements		None
Schedule B -	2 j	Office equipment and supplies		None
Schedule B -	2 k	Machinery, equipment, and supplies used in business		None
Schedule B -	2 l	Inventory		None
Schedule B -	2 m	Other tangible personal property		None
Schedule B -	2 n	Patents and other general intangibles		None
Schedule B -	2 o	Bonds and other instruments		None
Schedule B -	2 p	Other liquidated debts		None
Schedule B -	2 q	Contingent and unliquidated claims		None
Schedule B -	2 r	Interests in insurance policies		None
Schedule B -	2 s	Annuities		None
Schedule B -	2 t	Interests in corporations and non-incorporated companies		None
Schedule B -	2 u	Interests in partnerships		None
Schedule B -	2 v	Equitable and future interests, rights, and powers in personality		None
Schedule B -	3 a	Property assigned for benefit of creditors		None
Schedule B -	3 b	Property not otherwise scheduled		80,000.00
Schedule B -	1	Property claimed as exempt		3,300.00
Schedule B total				\$2,658,500.00

The CHAIRMAN. On April 7, 1977, Paul Linden, a member of the board of directors of the Sierra Corp., told a Labor Department investigator that, when Mr. Stanley Franklin resigned as president of Sierra in May 1977, Mr. Shenker agreed to pay him \$295,000 and to excuse a \$614,000 debt owed Sierra by Franklin.

According to the report of interview, Linden stated that Franklin had threatened to expose Shenker and the whole operation of the corporation if Shenker did not agree to those terms. Are you familiar with that report, Ms. Gallagher?

Ms. GALLAGHER. I am sure I am familiar with it in general. I have not refreshed my recollection about those facts.

The CHAIRMAN. OK. We will put that in the record as Gallagher document No. 9, without objection.

[Note: The material referred to appeared previously as Gallagher document No. 5.]

The CHAIRMAN. This same report of interview goes on to say that an investigation by Mr. Schanda, a business associate of Mr. Shenker's, found that various land sales by Sierra to Mexican nationals were "in fact a sham" and that the sham was carried out by a real estate broker named Welter, who received \$79,000 from Sierra in March 1976.

The memo stated that Sierra's records also indicated that \$76,000 was paid to a Mr. Blomberg, a business partner of Welter, in April 1976.

Were Schanda, Welter, or Blomberg ever interviewed by the Labor Department personnel about this matter, to your knowledge?

Ms. GALLAGHER. I do not know, but I am quite sure that there are two copies of that document, one of which was in the possession of the Department of Justice as soon as we got it, and a second copy of which, with some additional notation, came into our possession in 1982 and was referred to the Department of Justice at that time.

The CHAIRMAN. The answer is no. I do not think you did ever send any Labor Department personnel to interview them.

Ms. GALLAGHER. They would not have been under my jurisdiction, Mr. Chairman.

The CHAIRMAN. Was the Mexican land sales allegation ever referred to the Department of Justice, to your knowledge, other than your saying that they did know about it?

Ms. GALLAGHER. That is what I would mean by that.

The CHAIRMAN. In this memorandum of understanding between the Departments of Justice and Labor relating to the investigation and prosecution of crimes and related matters under title 1 of the Employee Retirement Income Security Act of 1974, Kane document No. 8, under "I. Criminal Prosecution," it says, "All cases involving violation of criminal provisions of the act will be prosecuted by the Department of Justice. Those cases investigated by the Department of Labor which may warrant criminal prosecution will be referred to the Management and Labor Section, Criminal Division, Department of Justice."

Ms. GALLAGHER. Yes, Mr. Chairman.

The CHAIRMAN. Was this matter ever referred in that sense?

Ms. GALLAGHER. This was a matter which was a criminal matter not arising under title 1 and which was referred to the Department

of Justice in the sense that I described. But the practice of putting together packages such as you discussed yesterday with Mr. Kane was never followed, as far as I am aware.

The CHAIRMAN. I see. Our understanding is that only a Schanda memo showing that the ripoff may have amounted to some \$300,000 was sent over. That was done, as Mr. Kane explained, surreptitiously by him. We will put that into the record at this time as Gallagher documents 9 and 10.

[Note: The material referred to appeared previously as committee document No. 1. See page 4.]

The CHAIRMAN. In an interview with committee staff investigators on January 25, 1982, you stated that, "The whole Department is responsible for making sure that Justice learns of criminally interesting stuff." You said, "What we find we send to Justice, but we don't go looking." My question is, why do you not go looking? If there are criminals out there who are ripping off pension trusts, do you not think you should be looking for them as well?

Ms. GALLAGHER. Mr. Chairman, it has been my understanding that the policy level officials of the administration make the policy about the extent to which the Department involves itself in those matters. I was trying to describe to your staff the practice that I thought existed, and I think I have described it accurately.

The CHAIRMAN. Whose responsibility is it within the Labor Department to ensure that these matters come to the attention of the Justice Department?

Ms. GALLAGHER. It is everybody's responsibility when they learn of matters warranting consideration for criminal prosecution to assure that, but there are procedures in place which, in general, I would think, accomplish that.

One of the procedures is that any matter referred to the Solicitor's Office for consideration is referred at the same time to the Department of Justice for them to decide whether they want to learn more about it.

Another procedure we have in our office is, whenever we learn of something new in a matter where the underlying has already been referred, we would naturally send that to the Justice Department, as in this case you mentioned we did in 1982.

The CHAIRMAN. Are these policies in writing, Ms. Gallagher, or are these just generally known oral policies?

Ms. GALLAGHER. The general policy about referrals with respect to the program is incorporated in some document. It may be a letter or a memorandum of understanding; I am not certain. I think it probably is a letter from the Department of Justice to us. The policy in my office is not in a document. We have a small office.

The CHAIRMAN. Would you produce that for us? We have asked for that, and nobody could produce that to us down there.

Ms. GALLAGHER. Certainly.

[The material referred to follows:]

**United States Department of Justice**

ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
WASHINGTON, D.C. 20530

November 6 1978

Honorable Francis X. Burkhardt
Assistant Secretary for Labor-
Management Relations
Labor-Management Services Administration
Department of Labor
Washington, D. C.

Dear Mr. Burkhardt:

For some time representatives of our Departments have been meeting to discuss and coordinate our respective enforcement responsibilities under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA). It is my understanding that representatives from the office of the Administrator, Pension and Welfare Benefit Programs, the Solicitor of Labor, the Organized Crime and Racketeering Section, and the Government Regulations and Labor Section have been meeting as a formal working group on a biweekly basis to coordinate our efforts in areas of concurrent jurisdiction and mutual interest. I am advised that the arrangement has been relatively successful and am taking this opportunity to confirm in writing and formalize certain procedures and agreements reached informally at previous meetings of the working group.

First, the working group, as described above, shall continue to meet on a biweekly basis. Should changes occur in the internal structures of either Department which involve ERISA responsibilities, the working group will continue to meet, staffed by the appropriate individuals.

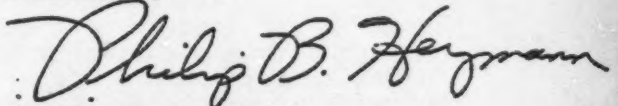
Second, the Department of Labor, through the Administrator of Pension and Welfare Benefit Programs, will furnish the Government Regulations and Labor Section a copy of each synopsis or summary of a report of investigation referred to the Solicitor of Labor in connection with investigations conducted by its staff. These synopses or

summaries will be furnished to the Criminal Division at the same time they are sent to the Solicitor.

Third, the Criminal Division will promptly furnish the Administrator of Pension and Welfare Benefit Programs with synopses or summaries of completed or interim reports of investigations that may pertain to a violation of Title I of ERISA. Information which arises from or relates to a grand jury proceeding and which is covered by the secrecy provision of Rule 6(e) of the Federal Rules of Criminal Procedure will not, of course, be provided without an appropriate court order authorizing disclosure. It is understood that all information and documents relating to these synopses in the possession of either Department, to the extent not covered by Rule 6(e), will be furnished promptly upon request.

Fourth, in those situations where either Department intends to bring a formal enforcement proceeding based on information supplied by the other Department, the working group shall be apprised in advance of the proceeding. In those situations where it becomes obvious that the conduct involved is depleting or may seriously deplete benefit plan assets, it is understood that the first priority of both Departments will be to preserve the plan's assets. In the event the working group is unable to agree on what litigative strategy will best preserve a plan's assets, the problem shall be referred promptly to appropriate higher officials of each Department for resolution.

Sincerely,



Philip B. Heymann
Assistant Attorney General
Criminal Division

DEC 22 1978

Honorable Philip B. Heymann
Assistant Attorney General
Criminal Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Heymann:

This is in response to your letter of November 6, 1978 which confirmed certain procedures and arrangements reached informally at previous meetings of the working group. We are in agreement with the four procedures you have set forth.

I would point out, however, in order to eliminate any possible future misunderstanding, that the language of the second paragraph of your letter may be slightly less flexible than the arrangement we understood was mutually contemplated. We do, of course, anticipate that the work group will continue to meet, as in the recent past, bi-weekly or as the issues involved require and the schedules of the participants permit. The regular participants have included representatives of the office of the Administrator, Pension and Welfare Benefit Programs; the Solicitor of Labor; the Criminal Division's Organized Crime and Racketeering Section; and its Government Regulations and Labor Section. From time to time, as appropriate, representatives of other offices, such as the Office of Labor-Management Standards Enforcement or the Office of the Inspector General (formerly known as the Office of Special Investigations), have also participated. We anticipate the continuation of this arrangement, so that the work group will be able to function as an effective coordinating mechanism for matters of mutual concern to the Criminal Division and the Labor-Management Services Administration.

The Labor-Management Services Administration will communicate this Agreement to all National Office and Field units subject to it and it is requested that the Department of Justice do the same.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Washington

LB
January 19, 1979

LABOR-MANAGEMENT SERVICES ADMINISTRATION NOTICE NO. 7-79

Subject: Confirmation of Existing Procedures Covering
Department of Labor/Department of Justice
Coordination of Enforcement Responsibilities

1. Purpose. This Notice transmits correspondence confirming existing procedures between the Departments of Justice (DJ) and Labor (DOL) relating to enforcement responsibilities under the provisions of ERISA.
2. Directive Affected. This Notice does not affect any existing directives of LMSA or DOL.
3. Background. Representatives of the PWBP, the Solicitor of Labor and the Criminal Division of the DJ have been meeting on a regular basis to coordinate their efforts in areas of concurrent jurisdiction and mutual interest. From time to time, representatives from the LMSA's Office of Labor-Management Standards Enforcement and DOL's Office of the Inspector General have also participated in these meetings. These participants frequently reach informal agreements covering matters of mutual interest. The DJ and DOL exchanged letters which formalize certain agreements and procedures.
4. Implementation. The attached letters between DOL and DJ provide details as to the nature of the agreement. Generally, it provides that DOL (through PWBP) will refer to DJ copies of PWBP Summaries of Investigative Reports which PWBP refers to the Solicitor. In turn, DJ will furnish DOL with summaries of reports of investigation indicating violations of the fiduciary provisions of ERISA in any investigations conducted by the FBI. In addition, and particularly important, both agencies agree that prior to initiating any court actions based upon information supplied by the other agency, the DOL/DJ work group will

1-26-79
PWBP
445- AHS
MHO
266

Put in
T/S min.
file
Wm

be apprised in advance of the proceeding. In these situations where it is obvious that the conduct involved is depleting or may seriously deplete benefit plan assets, the first priority will be to preserve the plan assets. In general, this means that in the above situations DOL will have priority in initiating enforcement action. It is noted that when the work group discusses this type of case and cannot agree on litigative strategy, the problem will be referred to higher authority for resolution.

The agreement between the agencies is incorporated in the attached letters dated November 6, 1978, from Philip B. Heymann, Assistant Attorney General, Criminal Division, Department of Justice, to Assistant Secretary for Labor-Management Relations Francis X. Burkhardt, and the Assistant Secretary's letter dated December 22, 1978, in reply to Mr. Heymann.

5. Effective Date and Cancellation. This Notice will be effective until such time as its contents are incorporated in the PWBP Compliance Manual.

J. Vernon Ballard

J. Vernon Ballard
Deputy Administrator
Pension Welfare and Benefit Programs

Attachments

Distr: N-1
N-2 (PWBP)
F-1
F-2 (PWBP)
F-4

The CHAIRMAN. Is it the responsibility of the Enforcement Division primarily to notify the Justice Department?

Ms. GALLAGHER. Consistent with the procedures that are in effect—this would depend on what stage the investigation is in—yes.

The CHAIRMAN. It is Enforcement's responsibility to refer these matters. I really wonder if your office really did not hamstring the effort. Because Mr. Daly, former Director of the Office of Enforcement, told my staff your predecessor, Mr. Scher, told him he did not want Enforcement people even talking on the telephone with the Department of Justice.

Mr. Kane wrote on June 13, 1977, that, "Dave Allen advised the writer, after a discussion with Monica Gallagher, that Dave Slatery and other attorneys at the Justice Department should be advised that any matter in litigation should be discussed with the Solicitor's Office and not with the Office of Enforcement."

Also, a memo from Mr. Ballard, the deputy administrator of the pension welfare benefit program, enunciated that very same policy.

Was this not in fact your office's policy, Ms. Gallagher?

Ms. GALLAGHER. Mr. Chairman, there are several things in there. It was certainly the desire of our office with respect to matters in litigation to serve as the gateway or to have knowledge of contacts made outside the Labor Department.

Perhaps we were more nervous about it then than we are now. We certainly were very troubled by the idea that our client at various levels in the hierarchy was doing things without our knowledge in matters that we had in litigation.

With respect to that policy memorandum that you referred to, I just want to alert you: I do not think that memorandum was sent. I have never seen an initialed copy, and I have never seen a dated copy. I do not know whether it was sent or not, but if I had to guess, I would say it was not.

The CHAIRMAN. Let us put the Kane memo in the record as document No. 14, without objection. So all documents up to 14 should be in the record, without objection.

[The material referred to follows:]

13 June 1977

Thomas F. Kane, Chief
Division of Reporting Enforcement

Southern Nevada Culinary Workers and
Bartenders Pension Trust Fund
Las Vegas, Nevada
Case No. 72-6113

Allen
Slattery
Kane
Justice/Rob

71
Committee
Document
14

To: J. Vernon Ballard
Deputy Administrator, FWBP

On June 10, 1977 a memorandum was forwarded to you concerning a Department of Justice meeting in Las Vegas on the captioned matter. The writer discussed this event with Dave Allen of the Solicitor's Office.

Later Dave Allen advised the writer, after a discussion with Monica Gallagher, that Dave Slattery and other attorneys at the Justice Department should be advised that any matter in litigation should be discussed with the Solicitor's Office and not the Office of Enforcement.

The writer later discussed this with Ed Daly. Both the writer and Ed Daly agree that Enforcement should not cease investigative discussions, as in this matter, with the Justice Department. If the Solicitor desires the Justice Department to only contact SOL on litigation matters, then SOL should instruct Justice of their desires - not the Office of Enforcement.

The writer has ascertained today from Dave Allen that LAAO CO Sam Clark has been scheduled for furnishing a deposition in this subject matter on June 22, 1977. This information, according to Dave Allen, was furnished to the LAAO. It is believed that information concerning these matters should be cleared through the Office of Enforcement so that we and the Office of Field Operations are aware of such matters. The Office of Enforcement should also be advised of the progress being taken in these cases as other persons who are not COs are also being deposed in the subject matter.

The relationship between the Justice Department and the Office of Enforcement has been very close and friendly, and it is believed that certain actions of the SOL may jeopardize these relations. Both Ed Daly and the writer believe that the role of the Solicitor should be placed in perspective concerning investigative matters. The Administrator is the only one who can define the Solicitor's role within FWBP matters.

cc-Daly (info)
Castaneda (info)

FWBP:TFKane/dkt 6/13/77

The CHAIRMAN. I think the Ballard memorandum was put into the record yesterday. If not, we will put that in the record at this point as well.

I think you have to admit that your statement amounts to a statement that the policy, if anything, was murky in the Department of Labor.

Ms. GALLAGHER. Certainly there was a lot of clarification done between 1975 and 1980, and a lot of things that I understand now I did not understand at the beginning, and I think that is true of everybody.

The CHAIRMAN. One benefit of these hearings is that we can clear up these policies and get them clarified, clearly delineating these important responsibilities.

If it was a large law firm, they would have a tracking system for the statute of limitations. They have to do it, or they would find themselves in malpractice suits all the time.

Second, they would have a line of responsibility as to what each attorney can or cannot do with regard to chatting with other divisions within the Department, or chatting with other attorneys in other law firms.

I would think that the minimum you would want to have is a good tracking system on the statute of limitations.

Ms. GALLAGHER. Absolutely.

The CHAIRMAN. Second, a very good policy on who does talk to Justice and perhaps even a better policy—although they both should be the highest type of policy—on how you make package referrals to Justice, when they should be made, and who is going to pass on them, and within what time frames you make them. Would you not agree with those statements?

Ms. GALLAGHER. I would like to defer to my superiors in the Department on those questions, Mr. Chairman.

The CHAIRMAN. I think you would agree with that, Mr. Ryan, would you not—that these are just the minimum things that you would need to run a good shop down there? Is that correct?

Mr. RYAN. That is correct.

The CHAIRMAN. I think it is important to point out that, due to, I think, lack of policies in this area and the statute's running, or at least what would appear to be the statute's running, this case fell through the cracks at the Labor Department:

Milking of fund assets for purposes not envisioned at all within their own agreements. That was discovered by Labor in March 1977.

Overstating collateral on the Shenker loans. That was an \$8 million collateral value assigned to a property worth only \$150,000. This was discovered by Labor in 1977.

Fraudulently pledging the same collateral for loans from different pension funds; the Murrieta collateral for both Culinary and St. Louis Pipefitters, Local 562, loans—that was found in July 1977, by Labor—and fraudulent sales of Murrieta property to Mexican nationals in order for Murrieta sales agents to collect 20- to 40-percent commissions from the fund with the purchaser putting only 10 percent down. That was known to Labor as of April 1977.

Fraud involving land improvement bonds in the Gardnerville project—the Sierra Corp.—in Nevada. That is a Shenker-owned

company that contracted for \$5.5 million in land improvements. It went bust after drawing more than \$3 million from land improvement bonds for work that was not done. The disbursement officer on the bonds was a business associate of Shenker's in another of the many Shenker companies. The penalty on that particular crime alone was a \$10,000 crime and/or 5 years imprisonment.

The statute, I think, does say, according to the Criminal Law Division of the Congressional Research Service that the statute runs for 5 years after discovery of the suspected crime by a Government agency. There was a failure to make timely referrals as a result of an untimely set of procedures, a lack of procedures, shabby procedures, or murky procedures—whatever the case may be, one or all of those.

I still cannot help but feel that there has to be some way of bringing criminal actions in these particular instances or in this particular case.

Another matter I would like to discuss with you, Ms. Gallagher, is the Department's handling of proposed transactions by the fund's investment manager, Upper Avenue Bank. According to a March 21, 1978, memo by Mr. Kane, arguments were made that Labor should agree to a 5-day notification period in which it could veto transactions exceeding \$100,000.

Mr. Kane said that this 5-day notice period, which you alone advocated out of a group of seven persons, "would not be of much use to DOL except for cosmetic purposes." Do you recall making such a statement, Ms. Gallagher?

MS. GALLAGHER. I do not recall making such a statement.

THE CHAIRMAN. Mr. Kane said in the memo that the theory behind such a notice was twofold:

One, if Senator Nunn inquired about the UAB and its actions, DOL could respond that the actions of the UAB are being monitored by DOL; and, two, if DOL had an objection to a transaction, we could object for the record, knowing that 5 days is too short a time to take action.

Did you make that statement or words to that effect, Ms. Gallagher?

MS. GALLAGHER. I recall that Mr. Kane and I were in favor of retaining the notice requirement, and others argued against it. A decision was made one way or the other. I do not recall making that statement, but I might have made a statement which could have been construed in that way—namely, that it would be hard for us to figure out the facts in 5 days, and we would be put in a position of having to object time after time.

THE CHAIRMAN. I would wonder who else could have made that statement during the argument. You and Mr. Kane were the only persons in the group of seven who voted for the notice. Mr. Kane stated that he favored a 10- to 15-day notice. If you did not make the argument, who would have made it?

MS. GALLAGHER. It was the practice at those meetings, at least on my part, to try to think out loud about the various options available. I think it was the practice of others in my office to do that. Whether I made that statement or not I do not know. I do not deny making it.

THE CHAIRMAN. OK. So your recollection could be faulty on that, but you are not sure.

Ms. GALLAGHER. I would not deny making any statement which was attributed to me.

The CHAIRMAN. Ms. Gallagher, would you say that the Department carefully monitored the Upper Avenue Bank's transactions?

Ms. GALLAGHER. I would say that the Department attempted to deal with the Upper Avenue Bank the way it would deal with any other fiduciary of any other employee benefit plan.

The CHAIRMAN. Have you ever heard of a developer named Paul Heck?

Ms. GALLAGHER. I have.

The CHAIRMAN. Did you know that he got a \$3.6 million loan under the Gardnerville workout proposed by the Upper Avenue Bank?

Ms. GALLAGHER. I know that there was an arrangement by which he was to develop that property with loans from the Valley Bank, or at least that was contemplated.

The CHAIRMAN. I see. Did you know that Mr. Heck had at least two previous bankruptcies?

Ms. GALLAGHER. Yes, Mr. Chairman.

The CHAIRMAN. Your enforcement people also knew it. They told Mr. Lanoff about it. What has been the experience with Mr. Heck on the Gardnerville account?

Ms. GALLAGHER. I am not certain. I think that at some point, after putting in the sewers and streets type of development, which was the primary thrust—and perhaps after putting up some of the houses—he defaulted; but I believe that there was no loss to the plan.

The CHAIRMAN. I see. He is presently in default, to the best of your recollection?

Ms. GALLAGHER. I am not certain. I heard that at one point, and I believe that it may be correct.

The CHAIRMAN. He has been sued by the investment manager, as I understand.

Ms. GALLAGHER. I am sorry that I am not as up to date as I should be on that.

The CHAIRMAN. That is OK.

Do you know if he has any organized crime connection?

Ms. GALLAGHER. Mr. Heck?

The CHAIRMAN. Yes.

Ms. GALLAGHER. Not that I am aware of.

The CHAIRMAN. OK. I just might mention that in one book, "The Last Mafioso," the author indicates that he does.

Could not Heck's involvement have been avoided if the Department had carefully scrutinized the bank's reports or ordered an investigation of him prior to his selection as developer?

Ms. GALLAGHER. There was an investigation of him prior to his selection. I specifically remember discussing the need for an investigation, and an investigation was undertaken.

The CHAIRMAN. Ms. Gallagher, I am still not sure if some of you understand the enormity of the problem that these actions by Mr. Shenker and the Labor Department's poor oversight have caused the 30,000 workers covered by this pension fund.

I brought out before that the \$45 million owed by Shenker amounts to almost half the current assets of the fund. This is a de-

ferred benefit plan and that the fund is actually sound as of this moment. But is it not true that, if the account now totaled \$145 million—as it rightfully should—rather than \$100 million, this would give beneficiaries leverage to push for higher benefits?

Ms. GALLAGHER. I think that is probably accurate.

The CHAIRMAN. Are you aware that the \$45 million owed by Shenker, if invested today at 16.5 percent compound interest, would amount to \$954 million in 20 years?

Ms. GALLAGHER. I have not run the calculations, Mr. Chairman, but the fact that the fund could be investing the money at advantageous rates is certainly a factor which we are all too well aware of.

The CHAIRMAN. Looked at another way, are you aware that this \$45 million, if distributed in a lump sum to the 30,000 fund participants, would amount to \$1,500 per union member?

Ms. GALLAGHER. That is not a calculation which I have considered.

The CHAIRMAN. You know, the men and women involved are culinary workers. They make beds, wash dishes, bar tend, et cetera. Many work for the minimum or slightly above minimum wage. Fifteen hundred dollars at the minimum wage is, of course, a substantial amount of money to them. What it means is, if these people take home \$150 a week, it means they would have to work 10 weeks just to make up that \$1,500 that they are now out, unless we can recover the full \$45 million.

Ms. GALLAGHER. I sure hope we can recover it.

The CHAIRMAN. OK. I think we have a vote on, so I am going to have to recess. Senator Nickles will resume when we get back. We will recess for about 10 minutes until we can get over, vote, and come back.

[Recess taken.]

The CHAIRMAN. Ms. Gallagher, let us interrupt your testimony for a minute. Mr. Ryan says he would like to make a couple of statements that might be clarifications and help us understand this better.

You need to leave right after you do this, do you not?

Mr. RYAN. Yes, Mr. Chairman.

The CHAIRMAN. Senator Nickles may have a couple of questions.

Mr. RYAN. I would be glad to answer them for the Senator.

The CHAIRMAN. Go ahead.

STATEMENT OF HON. T. TIMOTHY RYAN, JR., SOLICITOR OF LABOR, U.S. DEPARTMENT OF LABOR

Mr. RYAN. Mr. Chairman and Senator Nickles, I would like to make a comment on essentially four different matters and then, just from the Department's standpoint, give you a wrap-up of this oversight hearing. The first matter has to do with the Department's present relationship with the Department of Justice as described to this committee at a previous hearing which you chaired at that time, Senator Nickles.

The Justice Department, Criminal Division, and the director of the Organized Crime Strike Force feel that the relationship at present between the Department of Labor and the Department of Jus-

tice is the best that it has been in 19 years. That was in the transcript of your hearing.

We have met with the Department of Justice Organized Crime Strike Force Director and his assistant on close to 50 occasions in the last year. We have coordinated not only our activities with regard to the Central States pension and health and welfare cases, but we have also coordinated on a number of occasions our activities in the *Donovan v. Schmoutey* matter which involves the culinary workers.

In a nutshell, I feel the relationship with the Justice Department right now, as far as referrals are concerned and as far as our activity—lawyer-to-lawyer activity—is excellent.

As far as the relationship that took place before is concerned—that is, under the last administration—I break links with supporting the individuals who either work for me now or who had anything to do with that relationship during the past administration. Everything I have seen has indicated that it was not the type of relationship that should exist between Government agencies.

There were interdepartmental rivalries; there was a policy by the Carter administration which dealt with the investigation or followthrough on criminal matters which we feel was wrong. We have so testified before this committee and before PSI.

With regard to the Department of Justice and the criminal matters, I would also like to intertwine another matter, Mr. Chairman, which you have recently held hearings on, which has to do with the modifications to the ERISA statute and to LMRDA, the so-called Nunn-Rudman bill, which would provide for the removal of trustees, employees, and consultants of funds, if they were convicted of certain crimes.

As you well know, at the time the *Schmoutey* case took place and at the time most of the litigation we have been talking about took place—and, in fact, what would take place right now is that we could go forward with a criminal matter, we could convict that individual, but we could not remove him. We need that legislation.

I know you feel very strongly about it, Senator Hatch, and I know you agree, Senator Nickles. It is very important legislation, so that when an individual is convicted, that individual is removed.

As far as our relationship with Justice is concerned and whether or not we can conduct a civil investigation or a civil litigation at the same time that Justice is conducting a criminal investigation or a criminal case, I would like to make one short comment. We see no reason why this cannot be done on a simultaneous basis, none whatsoever.

The second matter I would like to discuss just in a very short statement is something we have said before this committee before. We will move very, very aggressively in this entire area of ERISA and violations of that statute. We will move especially vigorously in the area of corruption involved with pension plans, and I pledge that we in this administration will work very closely with your committee—both with you, Mr. Chairman, and with you, Senator Nickles—to do whatever we can to rid the pension plans of corruption. It is an absolute necessity.

Two matters have come before the committee on which I would like to make a short comment. I am more than willing to work

with your very able investigators and staff to clear up the record on this.

You have made mention that there were 34 cases closed during 1981 where the statute of limitations would have run during that year. We have reviewed the memorandum prepared by the Office of Enforcement. We would not agree with their numbers.

We would also point out that, when the memorandum was prepared, over half of those 34 cases had already been closed and the statute did not run on any of those cases, except for 2; I mentioned those yesterday. As I said, we are investigating those matters within the Department right now.

I will be glad, after we have finished that investigation, to come forward to address those matters with you.

The CHAIRMAN. We appreciate that. The point I am making though is that the statute was about to run. The impression we are getting—and we think it is a strong impression—is that they were closed administratively to avoid the criticisms of the statutes themselves running, or to avoid the statute running.

It does not matter whether the statute was going to run before or after the list was compiled. The important thing is that we feel that may be one of your findings as you report back to the committee.

Mr. RYAN. It may be, Senator, that another finding that I will come back with—which is my feeling right now—is that most of these cases that were closed in 1981 were closed because they were referred to the Office of the Solicitor, and they were found not to have litigation value. Under the prior administration, the decision was made not to close those cases, just to keep them there. I really do not think there is any direct relationship between the facts that they were closed in 1981 and the statute of limitations was to run in 1981. But if we find that there is, I can guarantee you that there will be action taken.

The CHAIRMAN. OK.

Mr. RYAN. The last comment I would like to make has to do with any backlog of cases. I think this program—the litigation of ERISA cases—has been not given the attention that it needs.

We definitely need more lawyers. We are moving more lawyers into this area. We definitely need a very, very aggressive program here. It is enormous litigation, Senator.

As you can see, whether in this case, where we have four lawyers and three auditors, or in the *Central States* case, where we have 15 lawyers, a slew of people working with records, 30-plus people in Chicago, and another 10 or 15 auditors and investigators, it is massive, massive litigation.

We always oppose funds where we will walk in with 2 or 3 lawyers and they have 40. It is standard civil litigation in the United States. There is an awful lot of delay. It is very, very unfortunate, and we will try to do whatever we can to quicken the pace, but I also would ask that both you, Mr. Chairman and Senator Nickles, recognize that this is the way very complex litigation works and that we have a little bit of patience.

My closing comment, I guess, is the same as the comment I made yesterday. As you well know, Senator Hatch, I suggested a long time ago that this would be a very important hearing and a very

important action of the Labor Committee—that is, oversight of ERISA litigation and ERISA enforcement. I applaud your efforts. I think it is absolutely necessary.

I hope that, by the time we finish either this hearing or a series of hearings, we can come back and sit down and say that the program is running the way we all feel it should run.

The CHAIRMAN. Thank you, Mr. Ryan. We appreciate those kind comments, and we appreciate your dedication to insuring that these matters are cleared up and that there is enforcement in this area.

We will certainly respect the Department more if you will get these materials back to us on what your final conclusions are with regard to these statute of limitations cases. Whether or not some were closed out to avoid embarrassment, and whether some were just improperly handled, as was shown at least in one case.

I am going to run over and vote. Senator Nickles, please stay as long as you can, and I will come back.

Senator NICKLES. OK.

The CHAIRMAN. He will recess until I can get back, so he can then vote.

Senator NICKLES [acting chairman]. Mr. Ryan, I have a couple of comments instead of questions. This follows up on the hearings that we had held earlier, particularly as related to Senate bill 1785 and the changes that we are trying to make.

I appreciate your statement today on the need for this type of hearing. This is one of the reasons for my participation today. Certainly before PSI and also before our subcommittee when we were reviewing ERISA, repeatedly needs were mentioned, and mention was made of the inactivity of the Labor Department and/or the Justice Department and the lack of coordination between the two. We had testimony that stated that over, and over, and over.

I appreciate your concluding statement and the statements that were made before my subcommittee that basically we are taking every possible step to coordinate those efforts.

Personally I am appalled at the inactivity, or the past inactivity, of the Labor Department and/or the Justice Department in being able to recoup those assets that are there and need to be recouped as readily as possible to insure the integrity of those pension plans. I would also like to somewhat set the tone and make sure that this does not happen again.

I think it is obvious that some legislative changes need to be made, along the lines of S. 1785. We are still negotiating with Labor, Justice, Senator Nunn, and others, on the final section of that, which basically is going to restate, in my opinion, authority that is already in the Labor Department to give them the powers to investigate and to move in that area.

Regardless of how we solve that, the important thing, regardless of whether or not you have, again, statutory authority to move, is that you move and that actions be taken. We should not have cases sit on the desk for 5 or 6 years, and all the while have these millions of dollars floating through a network of related corporations or through other individuals.

We have in the statutes existing law, to some extent, that should have been dealt with. A lot of that is behind us, but what is important is what we do from this day forward.

Your commitment and hopefully the commitment of others in the Labor Department and the Justice Department is going to be critical for us to move forward. Whether that involves changing personnel, involves making a written guideline of procedures of how or when to refer cases, or whatever, it is ultimately important that we do move forward and that we do not allow these things to continue.

Your assistance in helping us with the final language in S.1785, as well as with the other ERISA changes, is certainly welcome and we eagerly solicit your cooperation for that.

Do you have any followups? If not, I will recess until Senator Hatch comes back, and we can make this vote.

Mr. RYAN. No, thank you.

Senator NICKLES. We will stand in recess for 10 or 15 minutes.

[Recess taken.]

The CHAIRMAN. Ms. Gallagher, in general I think your testimony was factual and forthcoming. But I had a problem with your answer that the statute of limitations had run on the *Fourco Glass Company* case prior to the Department's attempts to get the parties involved to agree to a statute of limitations waiver in February 1981.

According to the Office of Enforcement's case list, the statute did not run until March 11, 1981, so you still had plenty of time to file the *Fourco* case last year prior to the statute's running.

Ms. GALLAGHER. I think I testified yesterday, Mr. Chairman, that they got it wrong and we got it wrong. If you would like me to walk through our analysis, I would be glad to.

The CHAIRMAN. Would you straighten it out for the record, so we know?

Ms. GALLAGHER. Our statute of limitations—to oversimplify just slightly—is a four-part statute. There is a 6-year general limitation. There are two 3-year limitations, one running from the time that the plaintiff had actual knowledge of the breach, one running from the time that a report is filed from which the Secretary could have obtained actual knowledge of the breach. I am not quoting, but those are the general ideas. Then there is a separate period running from the time of discovery in the case of fraud or concealment.

It seems to me likely that the March date that is on that list is based on the 6 years running from the transaction, although I am not certain of that; I do not know what that March date represents.

The CHAIRMAN. All right.

Ms. GALLAGHER. The original date that my attorney was working on was 3 years from the date the reports were filed that put us on notice, in some sense, of these transactions. That was the date that we considered as a possible defense before recommending litigation, and we decided it was not a good defense, because the reports had not sufficiently put us on notice.

What we discovered subsequently and should have discovered the first time is that an interview of an official of the company clearly described, or arguably clearly described, all of the transactions

during the summer of 1977, so that a very strong argument could be advanced that the statute of limitations ran on the matter in the summer of 1980. It was that statute of limitations argument that was troublesome to us and that caused us not to proceed with the litigation.

The CHAIRMAN. OK. I am glad to have that explanation. Thank you. I think that clarifies the record.

If you need to leave, that will be fine. Please just be available for recall if we have any questions that arise. Is that all right?

Ms. GALLAGHER. That is all right, Mr. Chairman.

The CHAIRMAN. Thank you so much. Thank you for being with us.

Welcome back, Mr. Young. We appreciate your excellent statement on the details of this case you gave to the committee yesterday. You made what is a very complex matter somewhat understandable.

Let me ask you at the outset today to give us a brief résumé of your legal experience.

**STATEMENT OF JOHN HARDIN YOUNG, TRIAL COUNSEL, U.S.
DEPARTMENT OF LABOR**

Mr. YOUNG. Thank you, Senator.

I graduated from the University of Virginia with a Juris Doctorate in 1973. I also have a Bachelor of the Civil Law degree from Oxford University. I spent over 2 years practicing here in Washington with a private firm. I have also been an assistant attorney general of the Commonwealth of Virginia for complex antitrust matters, and I spent 2 years prior to my coming to the Department of Labor with the firm of Blank, Rome, Comisky & McCauley, specializing in complex business and commercial litigation.

The CHAIRMAN. You testified yesterday that you were appointed lead attorney to supervise the *Southern Nevada Culinary Workers* case in February 1981. Is that correct?

Mr. YOUNG. That is correct, Senator.

The CHAIRMAN. As I understand it, you left private practice to undertake this challenge.

Mr. YOUNG. Yes, Senator.

The CHAIRMAN. It is quite a challenge, given the information my staff has been furnished. I think you were courageous to take this particular case on, and wish you the best in getting the moneys diverted back to the people from whom they were diverted.

Mr. Young, obviously you had to take time reading files, depositions, and interviewing people to get a fix on this case. Did you discover any disturbing reports, memos, and other communications during this period?

Mr. YOUNG. Yes, Senator, I have.

The CHAIRMAN. How many documents have you generated in discovery since you took over this case last year?

Mr. YOUNG. We have generated in the production of documents over half a million documents. We have also increased drastically the taking of depositions. I think each of the trial counsel on the other side could complain to you, Senator, that we have pushed them in the last year as hard as we could. Very frankly, Senator,

we will continue to push them. We will continue to push them until this case goes to trial, until the rights of the union members have been vindicated.

The CHAIRMAN. By the time you took this case over it was 4 years old. Were the documents you obtained in discovery pre-1977 documents that should have been obtained by your predecessors under the same discovery procedures that you used?

Mr. YOUNG. Yes, Senator.

The CHAIRMAN. Did you generate any documents that suggested criminal violations?

Mr. YOUNG. Yes, we have, sir.

The CHAIRMAN. As I understand it, you have a document relating to fraudulent Mexican land sales by Murrieta.

Mr. YOUNG. Yes, Senator.

The CHAIRMAN. Would you suggest that that suggests criminal violations?

Mr. YOUNG. That matter has in fact been referred to the Department of Justice. It involves not only the fraudulent land sales but a possible coverup of those land sales in discussions with both the Federal Bureau of Investigation and with investigators of the Department of Labor.

That matter has come up in the litigation. When we became aware of the potential coverup, that matter was immediately referred to the Department of Justice.

The CHAIRMAN. And this involved the Culinary Workers Pension Fund?

Mr. YOUNG. That is correct, sir.

The CHAIRMAN. The date of that document, as I understand it, was August 19, 1977. Is that correct?

Mr. YOUNG. Yes.

The CHAIRMAN. Would this be exhibit 1061 in your lawsuit against Mr. Shenker?

Mr. YOUNG. Yes, Senator.

The CHAIRMAN. We will put that document into the record at this point, without objection, as Young document No. 1.

[The material referred to follows:]

WLS
WLS
WLS

August 19, 1977

Morris:

Did you know that this memo - with your remarks - was not shown neither to the Department of Labor Investigators nor to the FBI?

I wonder why???

Yours,

Andy
 Andy

I hope you are well!!
Andy

f June 17, 1976

cainly every

sure that we



ANDREW E. STEVENS

EXHIBIT 1061
 FOR IDENTIFICATION
November 10 19 81
 WITNESS Unruh
 MARGARETE DeCOURSEY, N.P.

MEMORANDUM

TO: Ken Unruh
FROM: Morris A. Shenker

The attached memorandum from Andy Stevens of June 17, 1976 appears to have considerable merit, and certainly every precautionary measure should be taken to assure that we control the situation.

cc: Andrew Stevens ✓
Renny Ashleman

1061.2

MEMORANDUM

This should be done
WMA

To: Ken Unruh
 Remy Ashleman
 Paul Lynden
 Bill Suphan

From: Andrew E. Stevens

Subject: How to Create more Instant Seasoned Paper

Date: June 17, 1976

It is more essential at this time than ever before to implement a pre-payment offering program to our buyers.

1. MURRIETA HOT SPRINGS - FOREIGN MARKETS

From the inception of our sales efforts in these markets, all of us had a feeling of uneasiness about the method of sales we had to comply with.

The foreign Broker requested and received higher front monies than we were accustomed to which created an excessive negative flow. This brought with it a feeling of a risky venture on our part. The buyers are foreign, no direct communications with them, the individual investments are huge, and since they are buying with an excessive leverage, we cannot say that they are committed to continue with their payments to protect their high equity. The Broker on the other hand received all of the down payment and a sizable advance from us.

This situation could tempt a person to take advantage of us by assisting the buyer to make their down payment and/or monthly payment. Under normal circumstances this would not bother me. However, because of the high leverage purchases, it will take many, many months for us to have "seasoned" papers. Therefore, I wish to start a discount offering to all of our foreign buyers as soon as possible. The offering basically will be to give an incentive to buyers to make a one time sizable payment. I will request payments in \$500 increments not to exceed \$5,000 within 60 days from the date of offering. The incentive will be to give them a reduction of 10% of the extra payment from their note balances.

Assume that the result of this offering will be nil or negligible, then we should investigate the buyers capabilities and willingness to continue to make their regular payments.

I would definitely reassess our relationship with the Brokers. If we continue to use their services, I would reduce our exposure by either controlling their sales volume or discontinuing our arrangements with them until the existing accounts become stronger. Also, I would suggest that we hire a local attorney or a Spanish speaking PR man employed by S.C. who will have continuous direct contact with our buyers rather than the present way which is through our Brokers. Matter of fact, I would do this regardless of the results of this program. Now then, if the program is successful, then we have complete assurance that the sales are valid and we have more seasoned papers. The buyers will have higher equity in the properties they purchased. Therefore, they will have a built-in interest to protect their investment in making future payments.

1061.3

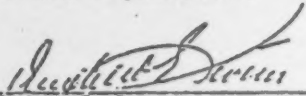
2. TAIHOE CONSTOCK

As I mentioned in my May 21st memo, there has been a drastic increase in the number of cancellations of solid sales. Our brokers and ourselves are on top of this problem. We are trying to save the delinquent accounts. Experience definitely shows that a buyer with high equity will hesitate to drop his investment. Therefore, I will start a similar program as I have described above.

This "Discount for Pre-Payment Plan" is necessitated even more by the fact that our Broker, Interstate Properties, has taken up the selling of another project.

The history of the land business shows that some "unscrupulous" broker, when they switch projects to impress the new developer, they transfer their previous buyers from the old project into the new one. In many instances the new developer encourages these "trades" by allowing the broker to increase the price of the lot, thereby he is able to give full credit for his buyers equity. It is known by me that our Broker, Interstate Properties, did that when I hired him away from GAC. I am not saying that Mr. Kam is planning to do this at this time since he is still selling our property. However, in order to prevent that from happening, I would like to see our buyers, especially in Hawaii, with higher equities than they have.

I am prepared to initiate this program immediately. So, if you gentlemen have any opinions, pro or con, I would welcome your remarks as soon as possible.


 Andrew E. Stevens

AES/rms

1061.4

The CHAIRMAN. This document is accompanied by a buck slip from Andrew Stevens, a Shenker employee, to Morris Shenker. It states as follows: "Morris: Did you know that this memo—with your remarks—was not shown neither to the Department of Labor investigators nor to the FBI? I wonder why? Yours, Andy." What was it that was being withheld from Labor and the FBI, Mr. Young?

Mr. YOUNG. It appears to us from the documents that what was being withheld was certain information regarding sales to alleged Mexican nationals at Murrieta Hot Springs.

The information that was attached to exhibit 1061 indicated that individuals at Murrieta Hot Springs and that Morris A. Shenker personally knew or should have known that the sales program was—to quote one of the documents—a sham.

The CHAIRMAN. Mexican friends of Shenker's would put 10 percent down to collect 20- to 40-percent commission on lot sales; is that correct?

Mr. YOUNG. I am not sure how to characterize the fictitious individuals. Clearly, the information that we have indicates that sales commissions were being paid the rate of between 20 and 40 percent, that the downpayment was 10 percent. One of the memoranda generated by Mr. Wolf Schanda indicates that one of the brokers was using his family and friends as a setup—as a scam—so that he could receive the commissions. It led to a negative cash flow at Murrieta Hot Springs.

The CHAIRMAN. That is because all of these people bought these lots in deficit; is that correct?

Mr. YOUNG. That is correct.

The CHAIRMAN. It looks as though sham individuals bought lots in deficit.

Mr. YOUNG. That is correct.

The CHAIRMAN. As I understand it, \$300,000 or thereabouts was lost to fund this approach.

Mr. YOUNG. That is our estimation, Senator.

The CHAIRMAN. And that the commission's structure invited this kind of practice.

Mr. YOUNG. Most definitely.

The CHAIRMAN. What did you do with these documents?

Mr. YOUNG. These documents were referred to the Department of Justice, to Mr. Margolis.

The CHAIRMAN. When did you do that?

Mr. YOUNG. There were referred in January 1982.

The CHAIRMAN. What was Mr. Margolis's reaction?

Mr. YOUNG. The actual transmittal was from Monica Gallagher, as the Associate Solicitor to Mr. Margolis, as Chief of the Organized Crime and Racketeering Section. I have heard nothing from the Department of Justice. Although I believe the matter has been discussed with other attorneys in office while I have been out of town taking depositions in this case.

The CHAIRMAN. Mr. Young, have you received the enforcement files maintained by Mr. Kane in this case?

Mr. YOUNG. Yes, I have, Senator.

The CHAIRMAN. As a result of your review, do you think this case should have been referred to the Department of Justice in 1976 or 1977 prior to the filing of a civil suit?

Mr. YOUNG. It is a difficult question, but let me answer it this way.

The CHAIRMAN. I want an answer, though. I want you to say yes or no on that, if you can, and I think you can.

Mr. YOUNG. The answer is yes. The question raises two concerns. The first is whether there is evidence beyond a reasonable doubt as to whether there is a criminal violation. On that, I am not in a position to render an opinion.

Certainly there was sufficient evidence, in my estimation, to refer the matter to the Department of Justice for its analysis.

The CHAIRMAN. And its determination.

Mr. YOUNG. Yes, Senator.

The CHAIRMAN. Mr. Young, we have heard over and over about how badly the Solicitor's Office wanted to delay a criminal investigation so as to protect a civil case. How would a timely referral to Justice in 1977 have affected the outcome of the civil case?

Mr. YOUNG. I am not sure it would have at all, Senator.

The CHAIRMAN. You are not sure it would not or it would have?

Mr. YOUNG. Maybe I am unclear on the question. I am certain that, consistent with what the Solicitor said this afternoon, that simultaneous criminal and civil cases could go forward.

The CHAIRMAN. It would not have affected the criminal case at all, and probably would not have affected the civil case, and might have helped the civil case.

Mr. YOUNG. That is correct, Senator.

The CHAIRMAN. For purposes of the record, is it possible to segregate the civil and criminal allegations and investigations?

Mr. YOUNG. It would depend upon the point in time. At some point, you open yourself up to allegations in the criminal case that the civil discovery process has been abused, therefore jeopardizing the criminal investigation or prosecution. That is the reason, for example, that the Antitrust Division many times brings the criminal and civil cases simultaneously and, from my experience, usually goes forward very quickly in the criminal case.

The CHAIRMAN. You are saying the Antitrust Division actually handles it in that manner?

Mr. YOUNG. That is my experience.

The CHAIRMAN. Do you not think that is a wise manner in which to handle these kind of matters?

Mr. YOUNG. From a prosecutor's viewpoint, yes, sir.

The CHAIRMAN. And even from a civil case viewpoint.

Mr. YOUNG. And from a civil case—yes, sir.

The CHAIRMAN. In the *Culinary Workers* case, did the statute of limitations problems arise on the criminal side as a result of the inordinate delay in the civil case?

Mr. YOUNG. Given that the case is entering its sixth year, there might be a question on the statute of limitations. I would like to defer an actual analysis of that until we hear from the Department of Justice as to their belief as to existing criminal cases, and because there may be pending criminal cases that could still be brought, I would like to, if I could, defer any judgment.

The CHAIRMAN. That is fine. But certainly it did not help the criminal side of this, did it—the delays?

Mr. YOUNG. No delay ever helps anyone, Senator.

The CHAIRMAN. So in this case it was very detrimental to any criminal action being brought; is that not correct?

Mr. YOUNG. Yes, Senator.

The CHAIRMAN. Mr. Young, let me put it this way: In the last 2 days you have heard a lot of criminal allegations regarding this matter. That the Solicitor's Office apparently swept them under the rug in 1977 and 1978, or at least certainly did not vigorously pursue them. If you were defending the people involved in this case, do you not think you would be raising the statute of limitations defenses yourself?

Mr. YOUNG. Senator, without looking at the precise facts and the allegations that might exist, I would not speculate on what I would do as a defense attorney or what I would do back in private practice. Senator, my practice has been—and it is the practice, I am sure, of almost all my colleagues in the defense bar—to raise any defense that is valid or colorable. So, if it were a possible defense and I were in private practice, I would certainly raise it.

The CHAIRMAN. And from what I have seen in this civil case that you are handling, they have raised just about every civil defense they possibly can and some that maybe nobody thought of before; is that correct?

Mr. YOUNG. They have raised numerous defenses, most of them, in my estimation, meritless. They have delayed the litigation, but yes, Senator, they have raised a host of affirmative defenses.

The CHAIRMAN. In your legal research in this matter, have you encountered a case called *U.S. v. Otterbien*?

Mr. YOUNG. I am familiar with Otterbien—yes, Senator.

The CHAIRMAN. This is a 1977 case decided by the U.S. District Court in South Carolina, as I recall.

Mr. YOUNG. That is correct, Senator.

The CHAIRMAN. *U.S. v. Otterbien* is the case in which company officials transferred funds back to the company from an escrow account maintained for a collectively bargained pension plan. A guilty verdict was returned, and a criminal penalty was imposed. This case is analogous, in my opinion, to the Shenker milking operation in the *Culinary* case, is it not?

Mr. YOUNG. I believe that there are certain parallels and analogies that can be made from Otterbien to various allegations involving transfers from Murrieta Hot Springs and Sierra Charter Corp. that were for the direct benefit of Morris A. Shenker.

The CHAIRMAN. We will put Young document No. 2 then, without objection, into the record at this point.

[The material referred to follows:]

that's what's on the agenda

at the largest forum for Enrolled
Actuaries & those interested in
pension and ERISA topics

MULTIPLE SCHEDULING
FOR PERSONALIZED NEEDS
UP TO THE MINUTE DEVELOPMENTS
LEADING SPEAKERS
AUDIENCE PARTICIPATION THROUGHOUT
VALUABLE FOR ALL LEVELS OF PRACTICE

enrolled actuaries meeting

January 23, 24, 1978
Sheraton Park Hotel
Washington, D.C.

For further information contact:
American Academy of Actuaries
1775 K St. N.W.
Washington, D.C. 20006

Attn: Ms. Sharp (202) 223-8196

Sponsored by:
American Academy of Actuaries
Conference of Actuaries
in Public Practice

IRVING SCHREIBER
Publisher

CARMIE V. SCUDERE
Editor

BLISSY TALLER
Managing Director

CAROL MATISON
Production Director

FLORENCE SHEDROFF
Circulation Manager

EDITORIAL ADVISORY BOARD

ROBERT D. C. NIEL
American Actuaries, Inc.
Dallas, Texas

ANDREW FAIR
Shapiro, Smith, Bailey, Fox & Far
Attorneys at Law, New York, N.Y.

SEYMOUR GOLDBERG
Attorney, Professor, Long Island
University

JOSEPH GRIFF
Touche Ross & Co.
Washington, D.C.

LOUIS HALLMAN
Director, Pension and Profit-
Sharing Institute, C.W. Post
College, Brookville, N.Y.

WILLIAM W. HAND
President, Hand & Associates
Houston, Texas

HOWARD J. JOHNSON
President, Howard Johnson & Co.
Seattle, Wash.

ROBERT J. JORDAN
Paul, Morwick, Mitchell & Co.
Garden City, N.Y.

WILLIAM KRAVITZ
Sudover, Apts. State, Mesinger & Flom
Attorneys at Law, New York, N.Y.

FRED NAUHEIM
President, Analytical Planning
Corp., Washington, D.C.

RICHARD REICHLER
Principal, International Accounting
firm of S.D. Ledesdorf & Co., N.Y.

THEODORE E. RHODES
Miller & Crevelier, Attorneys at
Law, Washington, D.C.

THELMA B. STUCHNER
Vice President and General Counsel,
Kwasha Lipton, Inc., N.J.

MAX WEIL
President, Max Weil
Associates, Inc., N.Y.

JOHN F. WOYKE
Attorney, Stamford, Conn.

JOURNAL OF PENSION PLANNING and COMPLIANCE

Vol. 3 No. 6

November 1977

The Pension Plight: Major Challenges
for Financial Accounting and
Reporting

...Andrew J. Capelli and
S. Thomas Moser..... 417

The Justice Department's First Move
Under ERISA

...David W. Elsbach..... 428

How the Actuary Can Protect
Himself From Potential Liability
Under ERISA

...Seymour Goldberg..... 435

Minimum Standard Regulations on
Hours of Service—Some Current
Thoughts

...Nicholas F. Danico and
Dan S. Brandenburg..... 448

ESOPs and Restricted Securities

...David J. Cariano..... 458

A Review of Tax-Deferred Annuity
Plans

...Edward A. Stoeber..... 465

Current Comments:
Senator Harrison Williams'
Comments on "Dual Jurisdiction"

..... 491



Publication of Panel Publishers

The Journal of Pension Planning and Compliance (formerly the Pension and Profit-Sharing Tax Journal) is published six times a year (January, March, May, July, September and November) by Panel Publishers, Division of Cantor Fitzgerald Group Ltd., 14 Plaza Road, Greenwich, N.Y. 11546. Subscription price, \$48 per year, single issue \$9.00. Copyright 1977 by Panel Publishers. All rights reserved. Second-class postage pending at Greenwich, N.Y.

International Union and an employer group.¹

During contract negotiations the corporation's general manager and the president of local 1422A orally agreed that employer payments to the pension and welfare plans would be due upon the employment of union personnel. Although employer participation in both plans was to commence upon execution of the bargaining contract, neither party was certain as to where and when the actual contributions were to be made. The welfare trust, to begin immediately as required by the contract, had not been drafted and the National IILA Pension Trust document was unavailable for inspection. Anxious to gain the bargaining contract, Universal's general manager offered to escrow the obligated plan contributions in a separate corporate bank account at the rates prescribed in the collective bargaining agreement until the union obtained the formal pension documents. Shortly thereafter, the corporation began reporting its deposits to the escrow account to the union as pension and welfare contributions, and also carried them in the corporate books as tax deductible pension contributions. The union, in turn, distributed copies of the bargaining contract to its members who then started work with Universal.

According to one set of corporate records, employer deposits to its controlled escrow account continued without interruption with neither party making effort to formalize the arrangement. The problem finally arose when "rumor mongers" learned that an employee desiring to transfer his interest in the pension account was denied an accounting of his funds. A later investigation into the books and records of the corporation disclosed that the bank account was slowly drained by a series of withdrawals which returned the money to the corporate general account. Based on this information the defendant, as president and majority stockholder of the corporation was indicted under 18 U.S.C. 664 for converting employee pension funds to capitalize previously issued corporate stock.

5. The relevant clause from the collective bargaining contract states: "Article IX: Pension (Pension Administration). The Employer, upon execution of this Agreement become party to the National Labor Relations Board's Association of Employers Trust Fund and agrees to be bound by the underlying Agreement and Declaration of Trust establishing the [Plan]. The Employer hereby designates as its representative under the said Agreement such Trustee or Trustees as are named in said Agreement as Employee Trustees, together with their successors and agrees to indemnify and hold the said Trustees harmless from all claims and damages. Commencing with the effective date of the Agreement, the Employer agrees to pay into the Trust Fund with respect to each of its employees who is covered by this Agreement contributions at the rate of 4.5% per annum. It is further agreed that such contributions will be repaid to the Trustees at the end of each calendar quarter and that in the event of delinquency in the timely payment of such contributions and written notification thereof to the Employer by the Trustees, the Employer agrees to promptly supply the Trustees with all information which the Trustees require for the administration of the Plan and the Trust Fund in such form as the Trustees provide. The Employer further agrees to furnish the Union quarterly reports on the number of its men worked by each employee so covered."

The Justice Department's First Move Under ERISA

DAVID W. ELBAOR

The following comment concerns the first ERISA case brought under Title I by the Department of Justice and may well represent a shift in enforcement policy regarding pension and welfare plans. In the past, enforcement in the employee benefit plan area has been against union or labor organization officials. The Otterbein case was a criminal action brought against the president and majority shareholder of an employer. The case also represents a departure from pre-ERISA interpretations as to what constitutes an employee benefit plan.

In *United States v. Otterbein*, (Crim. No. 77-9119, D.S.C. July 1, 1977) an employer defendant was convicted of willfully and unlawfully converting to his own use the assets of an employee benefit plan protected by the Employee

DAVID W. ELBAOR, is an attorney with the Government Regulations and Labor Section, United States Department of Justice. His work involves civil and criminal litigation under ERISA, the labor-management statutes, policy determinations in those areas and coordination with the U.S. Department of Labor. Mr. Elbaor graduated from the University of Virginia Law School and is a member of the New York and Virginia Bars.

The opinions and comments expressed herein are not necessarily those of the Department of Justice nor expressions of official Justice Department policy.

1. 18 U.S.C. 664: "Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use or to the use of another, any of the monies, funds, assets, premiums, or other assets of any employee welfare benefit plan, or any fund connected therewith, shall be fined not more than \$10,000, or imprisoned not more than five years, or both. As used in this section, the term 'any employee welfare benefit plan' means any employee benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974."

Retirement Income Security Act (ERISA).² As the first criminal prosecution to be brought under the provisions of Title I of the new Pension Reform Act, the case is of singular significance in its determination of ERISA jurisdiction in a criminal matter involving a breach of fiduciary responsibility. At the heart of the case was a jurisdictional question involving the interpretation of the ERISA definitional section regarding employee pension benefit plans.³

FACTS

The case arose from a collectively bargained agreement executed by Local 1422A of the International Longshoremen's Association and the defendant's corporation, Universal Enterprises, in July 1975. Under the agreement, Universal Enterprises had obligated itself to participate in a comprehensive employee benefit scheme designed to provide both welfare and pension benefits for its union employees. In the contract, Universal had agreed to establish a jointly administered welfare trust in compliance with the terms of Section 302(c) of the LMRA.⁴ The corporation further agreed to make quarterly payments into a multi-employer National ILA Employees Pension Trust administered by the

Although there was disputed testimony at trial as to whether the corporation or the union had agreed to "escrow" contributions in a bank account for the benefit of the employees, the defendant based his defense on the absence of any document or written notice to the corporation that the National Pension Trust ever existed. The defense argued that the employer had merely reached an understanding that it would contribute to an employee pension plan when it received notice from the union of the plan's establishment and where the employer contributions were to be forwarded.

From that position, the defense contended that there was no difference in effect had the corporation not physically deposited the money in a separate bank account but had merely made bookkeeping entries which "earmarked" money for eventual payment to the National Pension Plan. In that case, of course, there would have been no corpus to deplete nor ERISA plan to defraud. By physically depositing the money, argued the defense, it was merely setting aside money in a "piggy-bank" until it was eventually called due. And, until notice was received of where the contributions were to be forwarded, no trust obligation was ever created.

The prosecution's answer was that what might have occurred had the pension contributions only been "earmarked" in a bookkeeping system was irrelevant to the case. However, from both the jury instructions given and expert testimony elicited from the Director of the Office of Pension and Welfare Benefit Programs, a similar conclusion, also adverse to the defendant, would have been reached if the corporation had only "earmarked" the money on its books. According to the expert, the earmarking of funds was no different in result or effect from separating them physically in the instant situation. Remarking that the question presented in *Osterbein* was technical, the district court ruled that whether a pension benefit plan or a constructive trust with respect to the escrowed funds existed was a question for the jury. In applying the terms of ERISA to the facts of case, the court instructed that under ERISA a determination of a plan's purpose will be based not only on formal documents, such as collective bargaining agreements or written trust instruments, but also on the actual functions and practices — i.e., the surrounding circumstances — of a plan or arrangement. Thus, in deciding whether or not the money in the separate bank account was an employee pension benefit plan the jury was an instructed to consider:

- whether the escrow account was opened under the control of the employer pursuant to a written agreement which referenced pension or retirement benefits;
- whether the orally agreed upon purpose of the account or fund was to provide pension or retirement benefits or to hold money for such purpose;

2. 29 U.S.C. 1101 et seq.

3. 29 U.S.C. 1102(d): "The terms 'employee pension benefit plan' and 'pension plan' mean any plan, fund, or program established or maintained for the purpose of providing retirement or other benefits or as a result of surrounding circumstances such plan, fund, or program — (A) provides retirement income to employees, or

(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method for calculating the contributions made to the plan, the method of calculating the benefits payable, or the method of vesting of benefits from the plan.

4. 29 U.S.C. 186(c)(5): (in part) "The provisions of this section shall not be applicable with respect to money or other thing of value paid to trust fund established by such representatives, for the sole and exclusive benefit of the employees of such employer, and their families and dependents... Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, persons on retirement or death of employees, or for other purposes; and (B) such payments are for occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance or accident insurance; (C) the detailed basis on which such payments are to be made is specified in a written agreement with employees; and employees and employers are equally represented in the administration of such fund."

- whether money was, in fact, deposited into the account by the employer at the rate prescribed in a contract provision related to pension funds or benefits;
- whether the pension purpose of a contractual provision between the employer and employees was published in some manner to the intended beneficiaries;
- whether the employer made regular reports to the union or to the employees of payments into an account and related such payments to the pension provisions of the published contract;
- whether the employer claimed tax deductions for payments into a separate account, claiming them as contributions to a pension plan;
- whether money was directly or indirectly paid from the general funds of the separate account for other employee benefits, such as health insurance premiums;
- whether the employer designated or caused to be designated in his accounting system such deposits for the eventual purpose of funding pension fund obligations.

The court concluded that a finding that the bank account was, in fact, a pension fund under ERISA's broad definition could be made if the jury found any of the above circumstances to exist. The court also noted that the employer's failure to comply with any of the Title I provisions of ERISA did not affect ERISA coverage of the plan. It was the employer's burden to show that he was specifically exempted under 29 U.S.C. 1003(b) from ERISA coverage.

Comment

As the first criminal prosecution involving an ERISA fund, the *Otterbein* case illustrates the far-reaching scope of that act and the courts' inclination to view ERISA coverage in broadest terms. ERISA protection was extended to a relatively informal and clearly temporary arrangement between a union and an employer. The case emphasizes the rule that once a fund, however informal or temporary, is established, the strict ERISA fiduciary requirements allow expenditures only for the exclusive benefit of the intended beneficiaries or the reasonable administrative costs of the plan. That specific retirement benefits are not enumerated, limited or distributed in any particular manner will not remove an arrangement from the ERISA definition of a pension plan.

The determination that surrounding circumstances will create a plan renders unnecessary the existence of any written instrument. Rather, the phrase "surrounding circumstances" includes both written and oral communications

of intent to establish a plan. Such intent is normally manifested by past practice.

The result in *Otterbein*, which recognized from testimony and past practice the existence of an ERISA plan, differs substantially from the pre-ERISA decision in *Sour v. National Football League Players Association*, 550 F.2d 1287 (1st Cir. 1977) which held that an oral agreement, standing alone, was insufficient to establish an enforceable agreement. In *Sour*, the plaintiffs claimed that certain NFL players were to be included in a recently negotiated pension plan based on earlier oral assurances by the NFL Commissioner. However, because the First Circuit could find no evidence of past practice to corroborate the existence of a prior understanding nor any subsequent written ratification of the purported oral agreement, the First Circuit affirmed the dismissal of the plaintiffs' complaint.

The *Otterbein* case provides not only a guide to what will constitute a pension plan but illustrates the type of evidence which will be considered in such a determination. As indicated by *Otterbein*, an ERISA plan need not be specific in its benefit terms nor be established in any special manner. Rather, it is the intent of an arrangement which determines its status. Such intent to provide retirement benefits can be inferred under the broad rubric of "surrounding circumstances," which can be proved through testimony regarding past practice, industry custom, employee reliance on an employer's statements or written agreements, and other documents.

The *Otterbein* case also holds a high degree of relevance for the businessman who, perhaps informally or haphazardly, provides for employee benefits. Even if such employers are not thinking in ERISA terms, they may find themselves subject to ERISA's regulations — although not necessarily criminal proceedings — if they manage "employee marked" funds in a cavalier fashion. In the final analysis, *Otterbein* represents a case where a businessman simply miscalculated the odds against getting caught. Yet its singular significance is that it is the first attempted and successful prosecution under Title I of ERISA of an employer's breach of fiduciary responsibility.

Despite the *Otterbein* case however, it is likely that the Department of Justice will adhere to the same "good-faith, voluntary compliance" stance with regard to future ERISA problems that has characterized the attitude of the Labor Department. Like the Labor Department, the Justice Department is unlikely to take immediate action against either an employer or a labor organization where small amounts of money are involved, restitution is promptly and voluntarily made, or a mistake was made despite good faith reliance on a professional's advice. Of course, the size of a plan and the lack of employee dissatisfaction with certain employer errors as well as the industry practice are other relevant factors. Nevertheless, where a systematic and prolonged depletion of protected assets occurs, often in tandem with falsification of records, it would appear that the probability of criminal investigation and prosecution increases.

The CHAIRMAN. Under what title of the United States Code was the *Otterbien* case prosecuted?

Mr. YOUNG. It is my understanding, Senator, that that was brought under 18 United States Code, section 664, which is the statute in the criminal code that provides for penalties against embezzlement or theft from pension funds.

The CHAIRMAN. As I understand it, the sanction under that statute is a \$10,000 fine or 5 years imprisonment, or both.

Mr. YOUNG. That is also my understanding, Senator.

The CHAIRMAN. Would you have referred the matters involving the Shenker milking operation to Justice for prosecution under this same statute?

Mr. YOUNG. It is difficult to say what I would have done had I been there. Given the testimony that I have heard the last 2 days, given the commitment of the Solicitor in his statement before leaving this afternoon, serious consideration should be given to the referral of matters where there is alleged milking and where there is a sufficiency of evidence to support a violation of title 18 and, specifically, title 18, section 664.

The CHAIRMAN. And there appears to be that kind of evidence here.

Mr. YOUNG. The evidence is sufficient to refer it to the Department of Justice, as I believe was done, in part, early in the investigation of this case.

The CHAIRMAN. Let us turn back to civil matters for a moment, Mr. Young. As you know, the Labor Department filed for a preliminary injunction against Mr. Shenker on March 30, 1977. Do you know why the motion for a preliminary injunction was dropped?

Mr. YOUNG. Yes, I do, from the testimony and from the memorandums that I have reviewed in the course of my job.

The CHAIRMAN. What is that reason?

Mr. YOUNG. The reason the motion was brought was twofold: One, to stop funding; two, according to the Sacher memo that was read into the record, to get at the personal assets of the defendants.

The CHAIRMAN. As I understand it, the testimony was that they preferred to go with an investment manager approach.

Mr. YOUNG. That was the net result.

The CHAIRMAN. Do you agree with that decision? I want your personal opinion.

Mr. YOUNG. Given that the litigation is entering its sixth year, given that the investment manager's gross expenditures have exceeded \$13 million not including management fees and legal fees, the decision, in retrospect, seems hard to defend.

The CHAIRMAN. That is hindsight. If you had been handling that particular matter in that day and age, knowing Shenker's reputation and the hundreds of millions of dollars that he has had in union pension funds and his access to ready cash, would you not have wanted to bring pressure on him to force payment to this Culinary Workers Pension Fund?

Mr. YOUNG. I would have wanted to have brought pressure, as I want to bring pressure today, to get the litigation solved, to get Morris A. Shenker and his related corporations, which are defendants in *Donovan v. Schmoutey*, to pay back the money that has been unlawfully held.

The CHAIRMAN. And the best way to do that would have been to go for a preliminary injunction, would it not?

Mr. YOUNG. If I may, Senator, let me answer the question this way: The advantages to bringing a preliminary injunction would have been possible removal of the trustees, and an early determination on the likelihood of success on the merits, which may have moved the litigation forward. It may have also prevented arguments that were subsequently raised over who was responsible for the cessation of funding.

The reason for not going forward on the motion, as I understand the testimony during these hearings and my review of the documents, was that the relief actually sought was granted.

The relief sought in the motion itself, Senator, was the cessation of funding and the appointment of a receiver, although there is some disagreement as to what was to be the receiver role.

The CHAIRMAN. Or a court-appointed, court-supervised expert in the field.

Mr. YOUNG. That is correct, Senator.

The CHAIRMAN. Would you not have preferred a court-appointed, court-supervised expert in the field rather than the managers that they ultimately chose?

Mr. YOUNG. I believe that at this juncture, certainly looking at the expenditures and difficulties that have been raised, a court-appointed receiver may have been a preferable course.

The CHAIRMAN. You recall the Sacher memorandum we put into the record. That recommended you go for the assets, and that was not done, was it?

Mr. YOUNG. To the best of my knowledge, it was not done.

The CHAIRMAN. They failed to get Shenker's assets and failed to dismiss the trustees. They saddled the Labor Department and the pension fund with two ultraexpensive investment managers who themselves may not be competent and the leverage against Shenker may very well have been lost at that point.

Mr. YOUNG. That is, I think, a reasonable conclusion from the evidence that we have seen in the last 2 days.

The CHAIRMAN. Mr. Young, have you had any feelers from Mr. Shenker about settling this case out of court?

Mr. YOUNG. If I may, Senator—and I do not want to be evasive at all—we have discussed, as it is my ethical duty, settlement. This is a duty I believe we owe to the beneficiaries and participants of the pension fund.

However, those discussions may be ongoing, and I would prefer not to discuss the particulars of any settlement until we have gotten to the point that we have a firm commitment one way or the other.

The CHAIRMAN. OK. Let me make it easier for you. I will put into the record Young Document No. 4, which is a letter to Mr. Herbert Roth and Mr. Edward Horahan III, from E. Michael Murphy, attorney for Morris A. Shenker, without objection.

[The material referred to follows:]

Law Offices

MORRIS A. SHENKER

Young Document
4241-6116
AREA CODE 314

BERNARD J. MELLMAN
L. KOPLAR SHENKER
JAMES F. NANGLE, JR.
JOHN L. BOEGER
JAMES L. ZEMELMAN
CORDELL SIEGEL
JEFFREY J. SHANK
E. MICHAEL MURPHY
ANDREW F. FUZZER

SUITE 802 - 408 OLIVE STREET

Saint Louis, Mo. 63102

May 23, 1980

Mr. Herbert Roth
10960 Wilshire Boulevard
Suite 2232
Los Angeles, California 90024

Mr. Edward Horahan, III
U.S. Department of Labor
P.O. Box 1914
Washington, D. C. 20013

Re: Marshall v. Schmoutey, et al.

Gentlemen:

The purpose of this letter is to further settlement negotiations in the case of Marshall v. Schmoutey, et al. As you know, the Department of Labor (DOL) and Karsten Associates have sued Mr. Shenker and I.J.K. Nevada, Inc. seeking recovery of certain sums purportedly loaned to Sierra Charter and Murrieta Hot Springs.

It is Mr. Shenker's and I.J.K.'s position that the losses, if any, suffered in connection with these are due to the Pension Fund's, the Investment Manager's and the Department of Labor's own actions. In this respect, representatives of the Pension Fund have controlled the operations of Sierra since shortly after the execution of the Second Addendum. Indeed, Mr. Shenker and the other shareholders in Sierra transferred their stock in Sierra to the Pension Fund in order to permit it to acquire ownership of the Company. However, the DOL's precipitous action in filing its lawsuit and the failure of the Pension Fund to advance further monies to Sierra destroyed any hope that the Fund might have had to recoup the loans. Furthermore, it appears that certain of the assets of Sierra have been mismanaged by the Investment Manager since its appointment at the inception of the DOL's lawsuit, and that exorbitant fees and administrative expenses have been charged to the Fund in connection with Sierra's properties purportedly to preserve the Fund's assets, but which have resulted in a dissipation of those assets.

Nevertheless, my clients are willing to explore the possibility of resolving this endless dispute. It is hoped that a settlement of this litigation can be reached in order to stop the staggering legal costs of this action, to halt any further dissipation and waste of the Fund's assets, and to increase the monies available to the Fund's beneficiaries.

In discussions of settlement between Mr. Horahan of the DOL and the undersigned, the sum of \$10,000,000 was mentioned as a possible settlement figure for all liabilities of I.J.K. and Morris Shenker. At the present, I am willing to state on behalf of Mr. Shenker that this figure would be acceptable in settlement of all liabilities, provided that all other terms and conditions of a settlement, particularly those terms pertaining to a method of payment, could be worked out. This offer is not meant to foreclose other alternatives such as a possible resale and transfer of ownership of the properties to Mr. Shenker.

In order for you to evaluate this offer, I have hereinafter set forth a portion of the information requested by Mr. Roth. I believe this information can be divided into two general categories, namely: (1) information pertaining to Mr. Shenker's holdings in I.J.K. Nevada, Inc. and Dunes Hotels and Casinos Inc., and (2) information pertaining to Mr. Shenker's other assets. In the interest of pursuing settlement discussions, I have hereinafter set forth herein and enclosed certain information pertaining to Mr. Shenker's holdings in I.J.K. Nevada and Dunes Hotels and Casinos Inc. I believe that this information will provide a suitable framework for future discussions of settlement. In the event that these discussions offer promise of a resolution of this litigation, additional information will be supplied pursuant to your request.

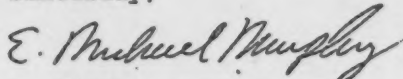
The information pertaining to Mr. Shenker's holdings in I.J.K. is contained at page 27, note 2(a) of Dunes Hotels and Casinos Inc.'s 1979 Annual Report, and at pages 2 and 3 of Dunes Hotels and Casinos' Proxy Statement, copies of which are enclosed herein.

Additionally, of the remaining shares of Dunes stock mentioned in the 10-K as held by Mr. Shenker, approximately 321,000 shares are pledged to or held by other lending institutions, entities or individuals. I hope the above-stated facts will assist you in attempting to resolve this matter.

The information stated above has been set forth for purposes of settlement only and is not to be used in the present litigation or to prejudice the position of any of the parties therein.

If you have any questions concerning the above, please do not hesitate to contact me.

Sincerely,



E. Michael Murphy
Attorney for Morris A. Shenker
and
I.J.K. Nevada, Inc.

EMM/dp
Enclosures

cc: Daniel A. Weber, Esquire
1800 Century Park East
Los Angeles, California 90067

RECEIVED

SEP 15 1974

The CHAIRMAN. Are you familiar with that letter?

Mr. YOUNG. Yes, I have reviewed it.

The CHAIRMAN. On the second page of that letter it says:

In discussions of settlement between Mr. Horahan of the DOL and the undersigned, the sum of \$10 million was mentioned as a possible settlement figure for all liabilities of LJK and Morris Shenker. At the present, I am willing to state on behalf of Mr. Shenker that this figure would be acceptable in settlement of all liabilities provided that all other terms and conditions of the settlement, particularly those terms pertaining to a method of payment, could be worked out. This offer is not meant to foreclose other alternatives, such as a possible resale and transfer of ownership of the properties to Mr. Shenker.

You are aware of that document?

Mr. YOUNG. I am aware of it, and I am also aware very clearly, Senator, that that is not the Department's position today and has not been the Department's position, since I have been trial counsel for the Department.

The CHAIRMAN. You mean, to settle for \$10 million?

Mr. YOUNG. Precisely. That is not my number and would never be my number.

The CHAIRMAN. I understand. You did not accept that?

Mr. YOUNG. And I would not accept it today.

The CHAIRMAN. Right, because that \$10 million would be to settle a claim of \$45 million, would it not?

Mr. YOUNG. That is correct, Senator.

The CHAIRMAN. That would be outrageous under the circumstances, would it not?

Mr. YOUNG. It would not be justified.

The CHAIRMAN. What was the Department's counteroffer? You know I have the documents; you might as well just say it.

Mr. YOUNG. At the direction of the Administrator of the Pension and Welfare Benefits Program and in consultation with the Associate Solicitor, I was directed to write a counteroffer to Morris Shenker that asked for \$18 million cash plus return of the property.

The CHAIRMAN. So that was about \$29 million.

Mr. YOUNG. Yes, Senator, but that was conditioned upon immediate acceptance, and it was also conditioned on the fact that, as the losses increased to the plan, correspondingly any settlement offer that the Department would consider would have to increase.

The CHAIRMAN. We will put Young Document 5 into the record. This is the letter to James F. Nangle, Jr., from John Hardin Young, dated March 10, 1981.

[The letter referred to follows:]

Young Document
5

March 10, 1981

James F. Wangle, Jr., Esquire
Law Offices of Morris A. Shenker
Suite 802
408 Olive Street
Saint Louis, Missouri 69102

Re: Donovan v. Schnoutey, et al.

Dear Jim:

This letter is in response to the proposals presented by members of your law firm during the meeting of February 24, 1981, in our offices. The meeting was held at Mr. Andrew P. Puzder's request to discuss possible settlement of claims against Morris A. Shenker and certain companies associated with him.

We have reviewed Mr. Puzder's letter of February 19, 1981, which as you know we had not received prior to the meeting, and the correspondence attached to that letter. We have also been informed by the investment manager, Thomas L. Karsten Associates, as to its proposed response to the terms of a settlement proposal set forth by Mr. Pierre E. Mailloux to Mr. Jack Reynolds in a letter dated January 16, 1981. (Attachment Number 4 to Mr. Puzder's February 19, 1981 letter).

After a careful review of this litigation the minimum acceptable settlement proposal at this juncture is \$18 million cash from Mr. Shenker plus retention by the plan of all property. As the losses to the plan and expenses of litigation continue to increase, we would anticipate that our minimum settlement figure would increase accordingly.

It is apparent that the terms set out in Mr. Mailloux's letter of January 16, 1981 are a very long way from terms which could be acceptable to us. We are always, nonetheless, open to further discussion whenever you believe that it would be worthwhile.

Finally, the terms of Mr. Mailloux's letter contemplate a release of claims by the Internal Revenue Service. To assure that there is no misunderstanding between us on this matter, you should be aware that we do not purport to represent the Service and are not authorized to act with respect to its claims. We would, however, attempt to obtain its views if settlement appeared more imminent.

We enjoyed meeting with you and your colleagues and
continue to hope that this matter can be mutually resolved.

Very truly yours,

John Hardin Young
Counsel for the Secretary

SOL:YOUNG:dc:3-10-81

The CHAIRMAN. I understand that you are an attorney and you are employed by an employer who can tell you what to do with regard to settlement. So I find no fault with you in that particular letter in the exercise of your duty. In fact, since you have taken over the case, if anything, I have to admit it has been handled very, very well, and I want to commend you for it.

I also want to get some of these facts in the record. Because I really believe this was not only mishandled by the Department of Labor, but it has been abominably mishandled and the Department of Justice on the criminal side, if the truth is really to be known.

Mr. Shenker rejected this offer of \$18 million plus \$11 million in property value, or a total of \$29 million; is that not correct—through his representatives?

Mr. YOUNG. That is correct. We have had no formal discussions with Shenker after the submission of the March 10, 1981, letter.

The CHAIRMAN. It is my understanding that you intend to pursue this suit and collect the whole \$45 million plus interest; is that correct?

Mr. YOUNG. Most definitely, Senator. I did not know there was any question of that.

The CHAIRMAN. I do not think there is, and so I would have to say, as a concomitant question that you would personally think that even that \$29 million offer was a little low.

Mr. YOUNG. Anything short of full recovery is low.

The CHAIRMAN. In this case.

Mr. YOUNG. In this case.

The CHAIRMAN. Because there is money there, or at least this man has access to moneys to save his gambling license at The Dunes Hotel; is that not correct?

Mr. YOUNG. That is correct.

The CHAIRMAN. OK. Ms. Gallagher and Mr. Lanoff were the ones who suggested that you sign the letter offering the \$29 million settlement; is that correct?

Mr. YOUNG. That is correct.

The CHAIRMAN. You have said that nothing less than full recovery, with interest, would be a fair settlement of this matter?

Mr. YOUNG. What I have said, Senator, is nothing less than full recovery is my goal. I have come out of private practice to try this one case, and I am here to try it. If at some juncture there is some settlement that seems to be in the best interest of the beneficiaries, then we ought to consider that.

In fact, Senator, the Secretary, in response to inquiries from Senators Laxalt and Cannon, has said that, following our ethical duty, again, to protect the beneficiaries and participants, we would consider any settlement that is reasonable. My position as a trial counsel is that nothing is satisfactory unless we get full recovery.

The CHAIRMAN. Mr. Young, I personally believe it should be more than the \$45 million, although I understand your answer as a good trial counsel. You have to look at the settlements at the time and make a determination based upon all the facts and circumstances, including what the judge is saying and what the law really is, among other things, at the time.

This figure of \$45 million reflects the lower interest rates that Mr. Shenker has been getting the benefit of since he defaulted. The

rates range from 8 to 11 percent on the loans. Truly prudent investment managers would be lending much more on loans such as these. Of course, I do not think they would have made these loans to begin with. But on loans that did not involve AAA-rated collateral they would be getting a lot more than 8 or 11 percent. You would agree with that, would you not?

Mr. YOUNG. I agree with you. I also agree with you that there is a serious problem with the opportunity or the time value lost of money to the pension fund over the 6 years that this case has been litigated.

The CHAIRMAN. The opportunity investment income has been foregone as a result of this whole mess, has it not?

Mr. YOUNG. That is correct, Senator.

The CHAIRMAN. Is it not the idea that the payoff should be more than \$45 million really not that unreasonable a conclusion for me to make?

Mr. YOUNG. It is not. But so that the committee is not at all misled by our demonstration of the principal and interest, that is, straight, principal and interest, which is only one component of those figures which we intend to establish as our damage figure.

There are some minor credits that may have to be given. The value of the property should be deducted from that, but there are also additions. There are, in our view, attorney's fees which are recoverable, particularly on the part of the investment manager.

It is my contention that the \$13.3 million that the investment managers have incurred to date are recoverable from the defendants.

The CHAIRMAN. Is that on top of the \$45 million?

Mr. YOUNG. That is correct.

The CHAIRMAN. You are taking \$58.3 million, less some credits?

Mr. YOUNG. That would be the full measure, if one were to seek full restitution, to put the plan back in the position that it should have been but for the unlawful conduct.

The CHAIRMAN. If this were a tort case, there would be punitive damages on top of that—would there not?—for the kind of action that we have seen in this particular instance.

Mr. YOUNG. There could, and if it were an antitrust violation, there could be treble damages.

The CHAIRMAN. Right. How much is being lost to these workers every year as a result of the difference between the 8 and the 11 percent that Mr. Shenker is paying and what would actually be the interest from a prudently managed investment by the pension fund trustees?

Mr. YOUNG. It is a significant amount.

The CHAIRMAN. Especially for these people who really do not make all that much money.

Mr. YOUNG. Absolutely.

The CHAIRMAN. We have been told that in the Culinary Workers Union this is not the only area where you have difficulties. Are you aware of that too—the pension area?

Mr. YOUNG. Yes, Senator.

The CHAIRMAN. That there is substantial evidence that these people are manipulated continually by union leaders, racketeers, Costa Nostra, and other people throughout the union.

Mr. YOUNG. I am aware of those allegations.

The CHAIRMAN. You are aware of the allegations?

Mr. YOUNG. Yes.

The CHAIRMAN. Do you believe those allegations?

Mr. YOUNG. As an attorney—

The CHAIRMAN. I am asking you as somebody who is bright, who has studied it, and who has looked at the allegations, not as an attorney. Do you believe those allegations?

Mr. YOUNG. This is one area where I probably believe that most of what the newspapers print is probably correct or at least would lead you to the reasonable inference that something is wrong.

The CHAIRMAN. This is really just the tip of the iceberg as far as the Culinary Workers are concerned?

Mr. YOUNG. I am not sure whether it is the tip or whether it is a part. Candidly, I have not thought about that. My efforts have been solely to seek recovery in *Donovan v. Schmoutey*.

The CHAIRMAN. How much has Mr. Shenker paid off thus far on these loans?

Mr. YOUNG. Those amounts are in dispute. At this juncture it is the Department of Labor's position that Mr. Shenker has paid nothing on the loans.

The CHAIRMAN. Not 1 cent of his own money?

Mr. YOUNG. That is correct.

The CHAIRMAN. Or anybody else's, for that matter.

Mr. YOUNG. That is correct.

The CHAIRMAN. He argues he has paid out \$3 to \$4 million in the third-party payments for Sierra land and the like. But I have a rough time finding where he has paid a nickel in this case. Do you have that same feeling?

Mr. YOUNG. I have that same problem and will have that problem until I see the cash in hand or a check that is verified that says there has been a payment. Until then, it is our position that the whole amount is due and outstanding, not only from Mr. Shenker but from the other defendants.

The CHAIRMAN. Mr. Young, you have been working on this case for about a year now. What progress have you made in getting it closer to trial?

Mr. YOUNG. I would have liked to report that we were going to trial. It was my hope that we would be at trial now.

When I first came on, we requested an immediate pretrial conference with the court, and in that request for a pretrial conference we said that "until discovery is limited and firm dates set for a discovery cutoff and trial, the threat of delay, unbearable expense, and unnecessary discovery would cast a lengthening shadow over this litigation."

We have continued with these pretrial conferences, and again in January 1982, we informed the court that this litigation will enter its sixth year on March 30, 1982; that since the filing of the complaint on March 30, 1977, the losses to the pension fund on the loans to Morris A. Shenker have increased from \$27.3 million to \$45.4 million. Interest in 1984 alone on this indebtedness will exceed \$4 million.

We are confident that the court, in the course of case management, will very soon set forth the method of trial and order a firm trial date.

The CHAIRMAN. Do you expect that to be this summer?

Mr. YOUNG. I would hope that it is this summer. I would hope that it was yesterday, Senator.

The CHAIRMAN. So would I. But you are hoping no later than Labor Day this summer?

Mr. YOUNG. That is in fact the latest recommendation that we made to the court. In our latest pleadings on case management the Department urged the court, to set a trial date no later than September 1, 1982.

The CHAIRMAN. I personally think you have been doing an excellent job on this case, as somebody who has handled some complex cases in my day myself. I just want you to keep plugging away. You are doing a real service. I also think you have been an excellent witness, and want to thank you for sharing your thoughts with us today. You have been candid with us, and that it not always easy to do as counsel in these matters.

One last question: Do you share my outrage at what really has been going on in this matter?

Mr. YOUNG. Let me reassure you that regardless of what has occurred in the past, since 1981 every effort has been made and will be made to bring this case quickly to trial.

In the words of the Permanent Subcommittee on Investigations, from another context, I am committed to insuring that "the rights of each and every union member whose pension trust assets have been dissipated are returned."

The CHAIRMAN. Thank you very much. We appreciate your being here. I am sorry we could not get to you yesterday, but I think you can see why we delayed until today. Thank you for being with us.

Mr. YOUNG. Thank you, Senator.

The CHAIRMAN. Our next witness will be Mr. Edward Stern.

Would you raise your right hand, Mr. Stern? Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. STERN. Yes, sir.

The CHAIRMAN. Mr. Stern, is it true that you became interested in the Department's handling of the fund as a result of the administrative review that you were conducting on the part of the enforcement branch?

STATEMENT OF EDWARD STERN, FINANCIAL ANALYST, OFFICE OF MANAGEMENT, LABOR MANAGEMENT SERVICES ADMINISTRATION, U.S. DEPARTMENT OF LABOR

Mr. STERN. I was doing it on behalf of the Office of Management in the Office of Enforcement.

The CHAIRMAN. What was the purpose of this review?

Mr. STERN. That review was to give me a little background information, so that I could write a plan for evaluating the Office of Enforcement, the enforcement strategies, and so forth.

The CHAIRMAN. As I understand it, this was at the request of Mr. Lanoff?

Mr. STERN. Yes. We conduct our evaluations as per the request of program managers.

The CHAIRMAN. It is also my understanding you had regular weekly meetings in his office about a number of things, including the review; is that correct?

Mr. STERN. Yes. I met with Mr. Lanoff often.

The CHAIRMAN. Why did the fund become a matter of interest to you?

Mr. STERN. In the course of my being in the Office of Enforcement, I was reviewing their chron file—the set of letters that they had sent out during July 1978. I became cognizant of a letter from Ed Daly to Mr. Lanoff concerning this case. That letter, as a matter of fact, dealt with the Sal-La-Sea land development deal. It was written by Tom Kane.

The CHAIRMAN. I think you also found out that there were potential financial problems with that particular matter.

Mr. STERN. The letter suggested that the Sal-La-Sea deal would probably lose about a half-million dollars.

The CHAIRMAN. I see. Did you find that no one in the Labor Department was watching the asset manager who was appointed by the trustees with the consent of the Labor Department?

Mr. STERN. I checked with the Office of Exemptions staff and also with the Office of the Solicitor and determined that no one had the clear assignment to do that. And I brought that to Mr. Lanoff's attention.

The CHAIRMAN. The Department was accepting the actions of the asset manager on face value; is that right?

Mr. STERN. I am not sure that I would say that they were accepting it.

The CHAIRMAN. They just ignored it.

Mr. STERN. They simply were not reviewing it. It was a matter of one office thinking the other was doing it. The Exemptions people thought the Solicitor's Office was doing it. The Solicitor's Office thought the Office of Enforcement was doing it.

The CHAIRMAN. It is my understanding that you wrote Mr. Lanoff a note that they should have someone review the asset manager's efforts, preferably someone with a good knowledge of real estate; is that correct?

Mr. STERN. Yes, I did.

The CHAIRMAN. You recommended Ken Marshall?

Mr. STERN. Yes. I initially recommended a somewhat more complicated scheme. Because of the complexity of the transactions, I thought it might be desirable to have several people work on it, Ken Marshall specifically because of his high level of knowledge of real estate investment matters. And also I proposed having his work reviewed by a panel consisting of an accountant, an economist, and another securities analyst.

The CHAIRMAN. Ken Marshall was a former employee of the Securities and Exchange Commission who was then with the Office of Judiciary Standards and who had extensive real estate experience as well; is that correct?

Mr. STERN. Yes.

The CHAIRMAN. He furnished a written report on April 2, 1979, which summarized his findings over a previous number of months; is that correct?

Mr. STERN. Yes.

The CHAIRMAN. Can you summarize his findings?

Mr. STERN. The essence of it was that the Upper Avenue Bank had made commitments to proceed in a certain course of action with regard to the various properties it was taking over and that the bank was not so proceeding, that there were a significant number of areas that should arouse our suspicion, particularly Paul Heck's bankruptcies and the financial projections or the lack of projections on some of the transactions, which is to say the Sal-La-Sea deal and the Gardnerville deal. He found that it looked like the plan was going to lose millions and millions of dollars if they proceeded with further investments in those transactions.

The CHAIRMAN. Is Mr. Marshall here today?

Mr. STERN. No. I believe he is taking the bar exam today.

The CHAIRMAN. Were you present at the meetings prior to the submission of his report when he orally reported his findings?

Mr. STERN. Yes. I attended several meetings on this from September 1978 through January 1979.

The CHAIRMAN. What was the reaction of the Labor Department officials at that meeting?

Mr. STERN. When Ken presented his findings in late September 1978, the Solicitor's Office was very surprised with his finding that the plan was going to lose this money. Monica, who was sitting to my left, said, "If he's right, we have made a series of mistakes."

The CHAIRMAN. You had made a lot of mistakes? Is that what Monica said?

Mr. STERN. Yes.

The CHAIRMAN. Did Ms. Gallagher at that time propose action on this?

Mr. STERN. I do not remember precisely what her recommendation was on that, Senator. My impression is, from that and other meetings, that her general view was, if the bank which was then managing the money proceeded to lose money, we could sue them later.

The CHAIRMAN. I see.

During the several months prior to the Marshall report, were you involved in this matter?

Mr. STERN. Yes, I was.

The CHAIRMAN. In fact, you were a confidant to Mr. Lanoff; is that correct?

Mr. STERN. I met with him, and I made some suggestions to him.

The CHAIRMAN. What were those suggestions?

Mr. STERN. After the meeting in September, there was a general feeling that some action should be taken to get a better grip on this. Mr. Lanoff, in October, authorized Ken Marshall to obtain information from the bank to clarify the reports, since there was some doubt in our minds as to what it was they were telling us, and there was considerable delay while we were waiting for the bank. Finally, we pushed the bank to respond. There was a series of meetings on it.

The CHAIRMAN. It is my understanding that the bank could not explain their investment program.

Mr. STERN. No. They were delaying. As a matter of fact, I was looking over my desk calendar for 1978, and I found a note of when I had talked to Norman Goldberg, who was chief counsel for litigation at that time, about pushing the bank to respond to Ken Marshall's request, and he advised me that one of the lawyers on his staff said that the bank was stalling.

Later, when Ken Marshall and one of the lawyers from the Solicitor's Office went to Chicago and met with them, the bank simply was unable to answer their questions. They did not appear to have plans for the outcome of these transactions.

The CHAIRMAN. After that, what action did Mr. Lanoff take when the bank could not explain its actions?

Mr. STERN. That became clear in the January 2 meeting in 1979, and I did not attend any meetings on that subsequently. I do not know of any action that was taken, aside from either Mr. Lanoff or Jack Ballard, the deputy, requesting Ken to put it all together and wrap it up into one report, which is what he did. That was his report of early April—April 2, I think.

The CHAIRMAN. You sent a memo to Mr. Lanoff—which we will call Stern Document No. 1—on January 9, 1979. In that memo, you warned Mr. Lanoff that even the report submitted by the Upper Avenue Bank would reveal millions of dollars of losses in the transactions proposed by the bank; is that correct?

Mr. STERN. Yes. I should add, Senator, that the bank did not make clear that they were going to lose millions. We had to discern that through analysis. I had, with Mr. Lanoff's permission, obtained a cashflow analysis that supported my feeling on this.

The CHAIRMAN. Earlier, did Ms. Gallagher have any comments about the potential losses?

Mr. STERN. She commented early in September that if in fact they were going to lose a half-million dollars on the Sal-La-Sea deal, it might be a reasonable thing, if in fact that was being done to forestall some greater loss.

The CHAIRMAN. Did anyone agree with that at the time?

Mr. STERN. It would be reasonable for them to lose some money rather than more money, but there was no evidence to suggest that that was the case, and the bank was not telling us that that was the purpose of their transaction.

The CHAIRMAN. Were you concerned that there was fraud in the plan's transactions?

Mr. STERN. I thought the original schemes that they had gotten into with Morris Shenker were fraudulent schemes. I just thought he was ripping them off.

If you look at the photographs of the property in the Coldwell Bankers' appraisal report, you will see that it is just desert as far as you can see. You sort of feel like laughing; it is preposterous—a bitter laugh, I should say.

The CHAIRMAN. Did you bring this feeling of fraud to Mr. Lanoff's attention?

Mr. STERN. I mentioned my concern in a memo in October.

The CHAIRMAN. October 10, 1978?

Mr. STERN. Yes.

The CHAIRMAN. I believe at that time you pointed out that the workouts at Sal-La-Sea and Gardnerville were supposed to be attempts to make the best of a bad lot; is that correct? In other words, recoup on terrible deals.

Mr. STERN. Yes.

The CHAIRMAN. Did you tell Mr. Lanoff at that time that they reeked of criminal fraud?

Mr. STERN. I wrote that in the memo; yes, sir.

The CHAIRMAN. I think you also pointed out that Paul Heck, the proposed developer of Gardnerville, had said on record, "Someone ought to go to jail for what happened there." Is that correct?

Mr. STERN. Yes.

The CHAIRMAN. And you specifically asked Mr. Lanoff, "How are we coordinating with Justice on this and related aspects of the Southern Culinary mess." Is that correct?

Mr. STERN. Yes, that was one of the questions that I raised for his consideration.

The CHAIRMAN. I need to take about 2 minutes. Let us recess for about 2 minutes, and then we will finish your testimony.

[Recess taken.]

The CHAIRMAN. Mr. Stern, I would ask you about the memorandum on October 10, 1978, wherein you pointed out that the workouts at Sal-La-Sea and Gardnerville were supposed to be attempts to make the best out of a bad lot or to recoup on terrible deals. That you had told Mr. Lanoff that they reeked of criminal fraud, and pointed out that Paul Heck, the proposed developer of Gardnerville had said on record that someone ought to go to jail for what happened here. When you asked Lanoff, "How are we coordinating with Justice on this and related aspects of the Southern Culinary mess?" Did you ever followup on this memo?

Mr. STERN. It was not something that I could follow up on in terms of asking specifically where we are on these things. I was involved in continued meetings suggesting that we pursue obtaining information from the bank. I do not recall ever finding out anything further about our turning this matter over to the Justice Department.

The CHAIRMAN. Let us put Stern document No. 1 in the record at this point and put Stern document No. 2 in the record immediately following, without objection.

[The material referred to follows:]

January 9, 1979

Stern Document
1

MEMORANDUM FOR IAN LANOFF

Administrator, PWBP

THROUGH:

E.J. GERMAN
Director
Office of Planning,
Evaluation & Systems

FROM:

Edward Stern

SUBJECT:

Compliance With the Conditions of Exemption D-964, for
the Southern Nevada Culinary and Bartenders Pension Trust

Exemption D-964, granted by the Department to the Upper Avenue Bank of Chicago as investment manager for the Pension Trust, stands apart from other exemptions because of its reporting requirement. The exemption, uniquely, requires the Bank to provide the Department with a "description" of transactions effected under the exemption and with an "explanation" of why such transactions are in the interests of the plan and its participants. The Bank has submitted, pursuant to that requirement, reports which the Department has found difficult to understand. PWBP staff analyses of these reports have lead to conclusions far different from those that the reports seem to suggest on their face.

A superficial reading of the reports gives the impression that proposed transactions will generate high income for the Trust. The reports do not speak of net losses or of the ultimate consequences of the transactions. A studied examination of the obscure details of the reports gives the impression that the transactions may generate income, but that the bottom line will show millions of dollars of losses.

The disparity between the optimistic picture the reports seem to present and the somber one the staff finds in the details is a matter of concern. These reports are in the public record. If the staff view results from a misunderstanding, we need to request that the reports be clarified. If the staff does not misunderstand the transactions, one must conclude that the reports fall short of providing a meaningful description of the events. In either case the Department and the interested public are put at a disadvantage by such reports. Distorted or incomplete information may impair the judgments and decisions the Government and the public might make with regard to these transactions.

Many individuals from several different organizational units have worked on the Culinary Workers case. It may not be clear who has responsibility for assessing whether the Bank has satisfied the reporting requirement. From my conversations with Norman Goldberg, Burt Liebert, Ken Marshall, Howard Hensley, and Tom Kane, I conclude that none of them believe he has been assigned responsibility for that function.

In view of the complexity and sensitivity of the case, the responsibility for determining the Bank's compliance with the conditions of the exemption ought clearly to rest on someone. Moreover, the controversy over the meaning of the reports argues for assigning a high priority to an analysis of the Bank's compliance with the reporting requirement.

I frankly expect that such analysis will find some serious shortcomings in the Bank's observance of that requirement. But in any case the Department's request for clarified, meaningful reports will correct the record and may even have some beneficial side effects, in that it may prompt deeper consideration by the Bank of the consequences of these transactions.

*Oct 10th, 1978**Hand Delivered 11/15/81**Stern Document
#2*

MEMORANDUM FOR IAN LANOFF
Administrator, PWBP

FROM: Edward Stern

SUBJECT: Potential Litigation Concerning a Possible Breach of
an Exemption (D-964) Granted to the Southern Nevada Culinary
and Bartenders Pension Trust

I believe this memo is exempt from FOIA as it deals with problems that may demand the Department to commence litigation. This memo identifies issues which warrant expeditious legal analysis. My recommendations follow a brief recap of essential facts and judgements we have made concerning the Sal-La-Sea land development deal.

On July 5, 1978, you informed the ^PUper Avenue Bank (by letter to Hoffman) that the workouts of Sal-La-Sea and Gardnerville would receive close scrutiny. Some weeks ago, it was recognized that reports required to be submitted to the Department (and IRS) under the exemption were not receiving indepth analysis by either PWBP or SOL. You selected Ken Marshall to perform the indepth analysis, because of Ken's education and experience in real estate investment matters at S.E.C. On September 26, Ken presented his preliminary findings. He showed that the Trust's takeover of the Sal-La-Sea property would result in the loss of at least a third to a half of a million dollars at best, with the loss of several million dollars a reasonable likelihood.

Ken's "best case" analysis simply compared the recent ^{best} independent appraisal value of the property with the currently known liens against the property. He also argued persuasively that the appraisal was overblown and inconsistent. Consequently his "best case" seemed cheerfully optimistic. Ken's views were further supported by statements made to me by ~~Mr. [redacted]~~, a successful metropolitan area builder of houses and apartments. As I reported last week, he said that undertaking so risky an investment for 15% was insane. He also said that experienced builders and land developers would have to be able to double their money in two or three years, or to quadruple their money over a somewhat longer term to be willing to undertake such risk (this computes to a 50% annual return). Thus, it seems we arrived at a consensus that the information provided by OE, ORSE and SOL to Ken Marshall showed Sal-La-Sea to be a losing proposition.

On the other hand, last week Monica pointed out that there could be difficult circumstances enveloping the Trust, under which a course of action that loses half a million dollars could be prudent. She suggested, as I understood it, that it might be prudent to take such a loss to forestall an even greater loss. However, all present concurred (I think) that if there is some extenuating circumstance, it is unknown to us, as no one has made representations to that effect!

Consequently, you directed Ken Marshall to prepare a letter to UAB to obtain the information he deemed necessary to clarify the apparently obscure and deficient reports. Such a clarification would also shed light on the statements made by Bank representatives to Judy Burghardt (and others?) concerning the prospects of selling Sal-La-Sea for some \$1.8 million. Ken and I and others have questioned how the Trust could reach such high hopes when all the hot air in that ballooned appraisal could lift the property value to only \$930,000. In any event we are proceeding on a course of action that will lead us to a clear picture of this business.

Just as Monica cogently argued that what is prudent is a function of the choices/alternatives available, I think further action by PWBP in this matter depends upon a precise understanding of the Department's special relationship to this Trust. We need to know with regard to this Trust the Department's special authorities and responsibilities, the possible consequences of exercising and not exercising those powers, the Department's "political"/social responsibilities (i.e., what the Congress and the public have a right to expect) versus the mere legal responsibilities, and where the Department stands right now vis a vis those responsibilities.

As long as this memo and the legal opinions it recommends obtaining, are exempt from FOIA, I do not see the harm of having some of these problems, relationships, duties, what have you, analyzed indepth. At the very least you can be more surefooted when you know where you are walking.

I have three other related comments. First, it does not speak well for the Bank to have provided us so skimpy an explanation on the Sal-La-Sea and the Gardnerville deals. There are many words on many pages but we do not know for what purpose and with what objective those deals were undertaken. Nor do we know how they are to be accomplished. We can only see the Bank's dreams of great cities built on sand. Those dreams may be as ephemeral as sand castles. Sure they may be sound as a rock. But for us to believe it, the Bank ought to come up with concrete evidence. The obfuscation and emptiness of the reports may reveal a confusion of thinking and a void in planning on the part of the Bank.

Second, the workouts at Sal-La-Sea and Gardnerville are supposed to be attempts to make the best of a bad lot. They are to recoup on terrible deals. They are terrible, in part, because they reek of criminal fraud. I understand that Paul Heck, the proposed developer of Gardnerville, has said on record that someone ought to go to jail for what happened there. How are we coordinating with Justice on this and related aspects of the Southern Nevada Culinary mess?

Third, we must push for a quick response from the Bank to our inquiry on the workout of Sal-La-Sea. We know that within the next several weeks the press and the public could become aware of these matters before we have

been able to clarify the record. News of any action on matters related to this case by the U.S. Department of Justice is likely to receive wide coverage in the pension media.

So, to recap, I suggest that SOL delineate DOL's role with regard to the plan and that we get the Bank to clarify what it has been trying to do on these workouts.

Finally, in view of the foregoing I think July Burghardt's admonition (of last week), that we should stop Gardnerville before it turns into an even bigger Sal-La-Sea, deserves the most serious consideration.

The CHAIRMAN. You reached a point where you were concerned that Mr. Lanoff would not take action on your memos, and you discussed that with your supervisor, Mr. E. J. German, who was the director of the Office of Planning Evaluation and Systems; is that correct?

Mr. STERN. Yes.

The CHAIRMAN. Mr. German gave you the advice that culminated in your preparation of an official memorandum to Ian through him; is that correct?

Mr. STERN. Yes; that was my memo of January 9. I thought it would be useful at that point to put it on the record, because all of my previous memos were just notes directly from me to Ian.

The CHAIRMAN. This memo warned Mr. Lanoff that reports submitted by the Upper Avenue Bank, the asset manager, were extremely difficult to understand and a staff analysis led to conclusions far different than the reports seemed to suggest on their face; is that correct?

Mr. STERN. Yes.

The CHAIRMAN. The staff concluded that a superficial reading gave the impression that proposed transactions would generate high income for the trust.

Mr. STERN. Yes, because the letters from the bank said they were going to make a lot of money selling this desert property, a couple of hundred lots a year for so many years at so much, and they talked about making money; they did not talk about—

The CHAIRMAN. The bottom line. They did not really talk about the bottomline. While they might make money, the bottom line was that it was going to lose millions of dollars; is that not correct?

Mr. STERN. That was our best estimate. That estimate was provided to me in the form of a cashflow analysis by one of the staff accountants.

The CHAIRMAN. Did you not suggest that the responsibility for determining the bank's compliance should rest on someone, and yet no one in authority believed that he was assigned that specific responsibility?

Mr. STERN. Yes.

The CHAIRMAN. What was Mr. Lanoff's reaction to this memo?

Mr. STERN. Mr. Lanoff never responded in writing to this memo, and he never commented to me, that I recall, about this memo. I did get word indirectly, second- and third-hand, that he was very angry that I had sent him this memo.

The CHAIRMAN. Very what?

Mr. STERN. He was very angry.

The CHAIRMAN. Very unhappy with the memorandum?

Mr. STERN. Yes, he was very unhappy to have received this memo.

The CHAIRMAN. Why is that?

Mr. STERN. Again, this is third-hand. My office director told me that Mr. Lanoff's deputy had called him and said that Mr. Lanoff was very angry because he did not want to have this memo on the record; it would put him in a bad light if GAO saw it.

The CHAIRMAN. If they found this memorandum, you say?

Mr. STERN. Yes.

The CHAIRMAN. Did you continue your meetings with Mr. Lanoff?

Mr. STERN. No, I was out. I did not do anything further on this case with him, except a telephone call later.

The CHAIRMAN. What was the reason for that? Why did not Mr. Lanoff continue meeting with you, since you were working on this case?

Mr. STERN. Apparently he did not wish to have my comments any further.

The CHAIRMAN. I see. Did he replace you with other people then?

Mr. STERN. About that time there was a change in the handling. The people from IRS who previously were working on this at IRS—some of them were coming over, and they were brought in. He asked them, I assume, to follow up on this.

The CHAIRMAN. Just so we understand, you have been working for the Department of Labor for 10 or 11 years.

Mr. STERN. Yes, sir.

The CHAIRMAN. And you are a cost accountant and financial analyst. At least you had cost accounting and financial analyst experience prior to coming to Labor.

Mr. STERN. Yes; in private industry.

The CHAIRMAN. But at Labor you have acted as a compliance officer, management intern, and eventually you were assigned to the Policy Office of Pension Legislation, where you have been involved in the interpretations of ERISA on fiduciary matters; is that correct?

Mr. STERN. Yes, sir.

The CHAIRMAN. And that is how you got into this to begin with?

Mr. STERN. Yes.

The CHAIRMAN. When Mr. Lanoff quit meeting with you and discussing these matters with you, this all happened after Mr. Marshall submitted his report on April 2, 1979, did it not?

Mr. STERN. No, Senator.

The CHAIRMAN. Or was it right before that?

Mr. STERN. My last meeting on the subject with Mr. Lanoff was the meeting of January 2, when we met to hear the report of Ken Marshall and I think it was Joe Rainer from SOL, talking about their meeting with the bank. Following that meeting, I felt it was desirable to write my memo of January 9.

The CHAIRMAN. What happened when the Marshall report was submitted? I understand it was delivered to Jack Ballard, who was Ian's deputy, on April 2, 1979. Did either Ballard or Mr. Lanoff react to that report by April 17, 1979?

Mr. STERN. No. I was waiting to hear what they thought of it, because I thought he had done some very good work.

The CHAIRMAN. You mean Marshall had done very good work?

Mr. STERN. Yes, he had done some good work on that. He provided some useful analyses, and his analyses had some frightening conclusions. When there was no reaction for about 2 weeks, I called Mr. Lanoff's secretary and asked to make an appointment to meet with him to discuss the report.

The CHAIRMAN. That was on April 17 or thereabouts?

Mr. STERN. I called him on the 16th, and he called me back on the 17th.

The CHAIRMAN. When you called on the 16th, you chatted with his secretary, I take it.

Mr. STERN. Yes.

The CHAIRMAN. As I understand it, the secretary said that she was not aware of such a report and did not think that Mr. Lanoff had seen it, and that you told her you wanted to talk to Mr. Lanoff after he had read it; is that correct?

Mr. STERN. Yes, sir.

The CHAIRMAN. As I understand it, Mr. Lanoff then called you on the morning of April 17, and you explained your concerns.

Mr. STERN. Yes, sir.

The CHAIRMAN. Had he read the report at that point?

Mr. STERN. He said that he had not but that Jack Ballard, his deputy, had discussed it with him or had gone over it with him.

The CHAIRMAN. Did you make a record of this conversation with Mr. Lanoff?

Mr. STERN. Yes, I did. It was a memo to the file.

The CHAIRMAN. As I understand it, you discussed the conversation with Mr. German, your supervisor, and he directed you to write a memo; is that not correct?

Mr. STERN. He suggested that I ought to make a note of it.

The CHAIRMAN. This is Stern document No. 3, which we will place in the record at this point, without objection.

[The material referred to follows:]

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION

April 26, 1979



Stem Document
3

MEMORANDUM FOR THE FILES

SUBJECT: Telephone Conversation With Ian Lanoff Re:
Ken Marshall's Report on the Southern Nevada
Culinary and Bartenders Pension Trust

This memo is to record the substance of the subject conversation. First, some background. The Marshall Report was delivered to Jack Ballard on April 2, 1979. By April 17, neither Ballard nor Lanoff had reacted to Ken Marshall (or to Tom Kane). The urgency and sensitivity of the report prompted me to call to Lanoff's Office around 4:30 on the 17th to request an opportunity to discuss the report with him. Sue Gurney said that she was not aware of any such report and did not think Ian had seen it. I told her I wanted to talk to Ian after he had read it.

On the morning of April 18, Ian Lanoff called me. He inquired after my call of the 17th. I told him that I wanted to comment on Ken's Report after he (Ian) had a chance to read it. Ian said that he had not read it, but that Ballard told him about the Report. Ian said that he told Ballard to have Elliot Daniel and Alan Lebowitz review the Report, because he wanted their comments. Ian said that, after Daniel and Lebowitz had reviewed the Report, he would have a meeting of everyone involved in the matter (I took from his manner of speaking that he intended to invite me to the meeting).

I said I wanted to make a suggestion; Ian welcomed me to do so. I offered that it would be desirable for Daniel and Lebowitz to give prompt attention to the Report, because the Report might have a bearing on the Department's handling of the transfer of control of the Trust's assets from Upper Avenue Bank to Karsten Associates.

I said that I thought at this critical juncture, when the Federal Court is processing the transfer, the Bank could be expected to state that it had kept the Department well informed of its actions (by regular required reports and by responding to all written and telephonic inquiries) and further that the Bank might attempt to get the Department to acknowledge that the Bank's handling of the Trust was acceptable under ERISA. (I was thinking that on April 17th Ed Horahan of SOL said to me that the Bank's representatives had remarked about their activities in keeping the Department informed.) Ian said that he would never give the Bank any acknowledgement that their service had met with the Department's approval.

I endorsed his position and told him that he would find in the Marshall Report a persuasive argument that the Bank had grievously mishandled the Trust assets. //

Immediately after Lanoff's call, I discussed the conversation with E.J. German, who directed me to prepare this memo.

Ed Stern *ES*.

The CHAIRMAN. On July 2, 1979, a report was prepared for Mr. Lebowitz by Mary Jo Fite, who was then on detail from the Internal Revenue Service, and this was submitted to Mr. Lanoff; is that correct?

Mr. STERN. What was the date again?

The CHAIRMAN. I think it was July 2, 1979.

Mr. STERN. Yes.

The CHAIRMAN. What did this report say?

Mr. STERN. That report disputed the findings of Ken Marshall. I would say it disputed them but did not refute them, at least in my judgment. It argued that it was not possible for us to determine what was going to happen, because there were so many variabilities—it was not possible to know what sort of thing could happen in a case like this—and therefore rejected Ken's conclusions that there would be losses of millions of dollars.

The report did agree, I thought, with my concern that it was not possible to know from the Upper Avenue Bank's reports what was going to happen. It agreed with me—I felt that it supported my contention that you could not tell what they were going to do, but at the same time it did knock Ken Marshall's report.

The CHAIRMAN. How would you characterize that report?

Mr. STERN. I considered that an unfortunate report, because it did not deal with the substance; it just sort of glossed over it.

The CHAIRMAN. Did you think it was a whitewash?

Mr. STERN. That is a strong way of putting it.

The CHAIRMAN. It is.

Mr. STERN. My feeling is that it just dismissed Ken's concerns with a wave of the hand. There was no substantive analysis of the concerns that Mr. Marshall had raised.

The CHAIRMAN. So it dismissed his report without any refutation of it, is what you are saying?

Mr. STERN. Yes. It was a polished piece of work. It did lay out what the bank said it was doing, but it did not come to grips with the concerns that Ken Marshall had raised.

The CHAIRMAN. I understand that you tried to discuss this matter with Ms. Fite.

Mr. STERN. I later talked to Mrs. Fite in July.

The CHAIRMAN. What did she say?

Mr. STERN. In the course of talking to her, we discussed her view that there really was not anything that could be done about Ken Marshall's report. Let me think about it for a minute.

The CHAIRMAN. Did she not basically admit to you that there was no real analysis made by her?

Mr. STERN. At a later time.

The CHAIRMAN. She did at a later time admit that?

Mr. STERN. She indicated that in September. When I first talked to her—she was a little busy at that time—she had just come on as the deputy division chief of exemptions, and she said that she would be willing to discuss it at a later time and I should get back to her. Several weeks later I called her back. Basically she said that she had not done an analysis of Ken's work.

The CHAIRMAN. What in the world was she doing then—just trying to please Mr. Lanoff?

Mr. STERN. I do not know.

The CHAIRMAN. Did she have any real estate background?

Mr. STERN. Not that I know; I do not know.

The CHAIRMAN. So as far as you know, she did not have a real estate background.

Mr. STERN. Not that I know of.

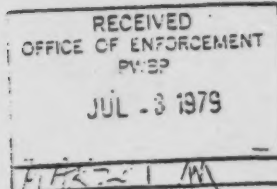
The CHAIRMAN. Is this report dated July 2, 1979, the report we are discussing?

Mr. STERN. The Lebowitz report is dated July 2, 1979.

The CHAIRMAN. Without objection, we will have that report (committee document No. 34) placed in the record.

[The material referred to follows:]

JUL 2 1979

Committee
Document
34VOL 6
Circ.

MEMORANDUM FOR: IAN D. LAXOFF
ADMINISTRATOR
PENSION AND WELFARE BENEFIT PROGRAMS

FROM: ALAN D. LEBOWITZ
ASSISTANT ADMINISTRATOR
OFFICE OF FIDUCIARY STANDARDS

SUBJECT: Exemption Reports re Southern Nevada Culinary and
Bartenders Pension Trust

The two reports submitted to date by Upper Avenue Bank, as investment manager of the Southern Nevada Culinary and Bartenders Pension Trust, pursuant to Prohibited Transactions Exemption 76-7 have been reviewed in this office to determine whether the reports satisfied the reporting requirement of the exemption. We have also analyzed the reported transactions with a view toward recommending whether any of the transactions deserve further scrutiny by the Department. Attached is our analysis along with a summary of the reported transactions.

OE does not agree with this memo. Since this is being handled by SOH and their division of 3 ready for Enforcement OE is filing the memo. OE has stated its position 7/13/79 memo and has been overruled by SOH. Ken Laxoff. Rane 7/10/79

As further reports are submitted to the Department, we will similarly analyze them and furnish you a summary.

The Deputy Administrator had requested that a report prepared by Ken Marshall setting forth his analysis and conclusions regarding the Upper Avenue Bank exemption reports be reviewed to determine whether I agree with Ken's conclusions, i.e., that the exemption reports did not meet the reporting condition of the exemption and that certain reported transactions were not prudent. Due to Jack's recent retirement, I am forwarding my comments directly to you.

I disagree with Ken's conclusion regarding the exemption reports as further discussed in the attached analysis. As to Ken's conclusion that certain transactions were not prudent, I do not believe the information available to us at this time warrants such a conclusion. Although many projections were made concerning the possible outcome of certain reported transactions, conclusions based on such projections appear premature inasmuch as the ultimate results involve so many variables and the impact on related plan assets cannot, in my view, be currently judged.

OFS:DE:FTTE:mb; 8/2/79

cc: Chron
E. Daly
M. Gallagher

lebowitz
Hensley
Fite

Pursuant to a stipulation entered into on August 30, 1977, by the parties to the litigation in Marshall, et al. v. Schmoukey, et al., No. CV-87-77-47-PDF (D. Nev.), Upper Avenue Bank (the Bank) was appointed investment manager for the Southern Nevada Culinary and Bartenders Pension Trust (the Trust) with the power to manage, acquire, or dispose of any of the Trust's assets under its management. The assets to be managed by the Bank consisted of the Trust's real estate and real estate related assets including all loans secured by real estate, and its cash and cash equivalent assets. An asset management plan describing in general terms an overall plan for management and/or disposition of the Trust's assets was filed by the Bank with the court on March 6, 1978, and amended on March 28, 1978. No objections to the plan were filed and, under the terms of the stipulation, the plan was deemed approved. The plan made clear that the Bank intended to "work out" the real estate related loans on a selective asset-by-asset basis over a period of years.

On behalf of the Bank as investment manager for the Trust, ten reports have been filed pursuant to the condition contained in Part I of Prohibited Transactions Exemption 78-7 (43 FR 28578). The exemption was requested and subsequently granted in order to permit the Trust to engage in certain transactions with parties in interest in working out its assets. The exemption provided that the Bank must submit to the Department of Labor and the Internal Revenue Service a written report within 30 days after consummation of a transaction if the Bank actually knows that the transaction involves a person who is a party in interest. The report must include a description of the transaction, the identification of the party in interest and its relationship to the Trust, and

an explanation of why the transaction is in the interest of the Trust and its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Trust.

Allegations have been made within the Department that certain transactions reflected in the reports were imprudent and that the reports fell short of meeting the reporting requirement contained in the exemption. The ten reports filed to date have been reviewed in this office and have been found to meet the minimum substantive requirements of the reporting condition contained in the exemption. Admittedly, the reports do not answer every question one might raise regarding the transactions discussed. However, the reports were not intended to be exhaustive, all-encompassing justifications for such transactions. Rather, it appears that the reports were viewed as a mechanism for monitoring, in a broad sense, the activities of the Bank regarding Trust assets to ensure that the Bank was not abusing the authority granted to it, and that the transactions reported furthered the objectives of the asset management plan.

It has been alleged that certain reported transactions, specifically the Seaview and the Gardnerville/Comstock transactions, are not prudent within the meaning of ERISA section 404, the remedy for which includes making-up any losses the plan suffered as a result of the transactions. Several financial projections concerning development of these properties have been produced. However, we feel that at this time nothing definite can be gleaned from those projections due to the myriad of contingencies involved. However, since the exemption was an integral part of litigation initiated by the Department, we believe that the

ultimate decision regarding whether additional information should be obtained at this time should be made by those more closely involved in the litigation process.

Of course, an alternative remedy to litigation is to revoke the exemption, if warranted, but since the Bank is no longer the investment manager for the Trust, a prospective revocation would be meaningless. Further, there has been no indication that retroactive revocation of the exemption could be sustained inasmuch as no showing has been made of a misstatement or omission of a material fact in the exemption application or subsequent submissions and the reports necessitated by the exemption have apparently been filed as required. It should also be noted that the Department has now granted a virtually identical exemption for Thomas L. Karsten Associates, the new investment manager for the Trust, indicating satisfaction that the exemption is appropriate.

Following is a discussion of the transactions reported grouped by the particular property involved. One common thread in all of those transactions wherein the Trust acquired ownership interests from Sierra Charter Corporation of Nevada (Sierra) or its subsidiaries to replace security interests already held by the Trust was that contemporaneous agreements were entered into by Sierra, any of Sierra's subsidiaries involved, Morris Shenker (Shenker), and the Bank providing that:

(1) the acquisition of the property would not be a forgiveness by the Trust of any indebtedness owed it by Sierra nor would the acceptance constitute a waiver by the Trust of any defaults by Sierra of its indebtedness;

(2) the execution of the agreement does not constitute at law or equity a waiver of any defenses or claims that Shenker or the Trust may

have had prior to the agreement; and

(3) credit toward the balance of the Sierra debt is to be given under an established formula if the property acquired is sold or if it is not liquidated within a specified period of time.

Seaview

The first report filed, dated July 25, 1978, concerned transactions involving certain property owned by Seaview Village, Inc. (Seaview). Seaview is a wholly-owned subsidiary of Sierra, a major debtor of the Trust and a corporation controlled by Shenker. All of Seaview's common stock was pledged to the Trust as security for loans made by the Trust to Sierra. The primary asset of Seaview was an interest in approximately 530 acres of undeveloped real estate near Lincoln City, Oregon. The interest in that real estate was derived from two installment contracts for the purchase of the property. The interests in those contracts had been assigned to Seaview, subject to a first lien by Life of Nebraska Insurance Company securing notes in the amount of \$700,000. Seaview also owned the Sal-La-Sea District Improvement Company (Sal-La-Sea) which owned a parcel of real estate contiguous to the 530 acre tract.

As of the date the asset management plan was filed, the Seaview property was encumbered by various liens amounting to \$838,000. An appraisal of the property placed its fair market value at \$930,000. On March 17, 1978, assignments of the rights to the Seaview property contracts were obtained for the Trust from Seaview. In addition, fee title to the Sal-La-Sea parcel was conveyed to the Trust.

The Bank advanced several reasons why it deemed the transactions to be prudent. The Bank had determined that both the installment contracts

and the Life of Nebraska notes were in default and that the County of Lincoln, Oregon had commenced action to revoke the existing map and zoning on the property due to inactivity and adverse publicity concerning Sierra and Shenker. Following discussions with the appraiser of the Seaview property and local realtors, the Bank concluded that the property had been inadequately handled by Seaview and that the property would increase in value if the map and zoning were not revoked because the property is attractive and well located, lots in the vicinity were selling for favorable prices and Lincoln City, Oregon officials stated that they were interested in annexing the property and providing city sewer and water service, which actions would enhance the value of the property to a developer. The Bank determined that if the Trust acquired Seaview's rights to the property, the investment of new monies could be limited to approximately \$100,000 by maintaining on a current basis the installment contracts and promissory notes and limiting the goal of the Bank's activity to obtaining approval of a map and appropriate zoning and then seeking a developer to continue the project.

With an appraised value of \$930,000 and existing debt of \$838,000 on the property, the value of the property would need to appreciate rapidly for the Trust to avoid a loss from servicing the debt. The Bank did not furnish projections in the exemption report indicating the amount and timing of property appreciation it expected, which to some extent would determine the prudence of the transaction. The Department may wish to pursue the acquisition of such information, if it is decided to seek any further clarification.

Genoa Peak

The exemption report dated August 3, 1978 disclosed, among other transactions, that on July 6, 1978 the Bank obtained from Sierra a quitclaim deed in the name of the Trust on real property known as Genoa Peak, which is comprised of 465 acres of mountain top land near Gardnerville, Nevada. (A deed of trust on the same property had been given to the Trust in 1976.) As discussed in the asset management plan, access to the property is limited and difficult, making development expensive. The property was purchased with the intent of exchanging it for other real estate owned by the U.S. Forest Service, and the Bank intends to pursue the possibility of such an exchange.

The rationale advanced by the Bank for acquisition of the property in place of the security interest therein is that the Trust will be able to totally control any disposition made of the property.

Gardnerville/Comstock

Seven exemption reports, those dated August 3, 1978, November 13, 1978, December 15, 1978, January 9, 1979, February 8, 1979, March 28, 1979, and April 13, 1979, discussed transactions involving Gardnerville/Comstock, a subdivision development south of Gardnerville, Nevada. The area is in a valley adjacent to the Lake Tahoe resort area, just east of the California border. The project consists of approximately 3100 lots, an 18-hole golf course with clubhouse, a restaurant, a swimming pool, 10 tennis courts and 600 acres of vacant and unsubdivided real estate for which no specific use has been determined. The Gardnerville/Comstock assets or properties which secured portions of the Trust's loans to Sierra through deeds of trust were divided into four distinct properties:

- (1) land contracts and deeds of trust on sold lots in Units 6 and 7;
- (2) unsold lots in Units 6 and 7;
- (3) Units 8 and 9: and
- (4) Genoa Peak, the property discussed above.

On July 6, 1978, the Bank obtained for the Trust from Sierra a quitclaim deed on Units 8 and 9 together with a quitclaim deed on Units 6 and 7 to be held in trust for the Trust by the Valley Bank of Nevada (Valley Bank). In addition, the Bank obligated the Trust, through agreements with Valley Bank and Paul Heck (Heck), a developer, to participate in the completion of the development and sale of Units 6 and 7. The agreements concerning development and sale of Units 6 and 7 went through several modifications and were finalized as of March 19, 1979.

In essence, the Trust entered into an agreement with Heck to complete certain off-site improvements to Units 6 and 7, which improvements will cost \$5,600,000 to construct. Heck in turn is to purchase over a five year period approximately 1000 lots at a gross price per lot of \$12,000 (for a minimum of 50 lots to be purchased in 1979), \$13,000 (for a minimum of 200 lots to be purchased in each of the years 1980 and 1981), or \$14,000 (for a minimum of 200 lots to be purchased in each of the years 1982 and 1983).

To finance the improvements, the Trust and Heck borrowed \$3,600,000 from Valley Bank. To induce Valley Bank to make the loan, the Trust agreed to pay interest on the balance (\$1,600,000) of a \$2,600,000 loan made in 1976 to Sierra which was guaranteed by the Trust. (Neither the Trust nor Valley Bank waived or released any defenses or actions that either may have in the amount or enforceability

of the Trust's guarantee of the loan to Sierra.) Also, proceeds from the sale of lots in Units 6 and 7 are to be used to repay Valley Bank not only for the \$3,600,000 loan but also the 1976 loan to Sierra. The Trust provided Valley Bank with a first deed of trust on Units 6 and 7 to secure the \$5,200,000 total of the loans.

As part of its justification for entering into the Gardnerville/Comstock transactions, the Bank furnished the following items of background information:

(1) Gardnerville Ranchos General Improvement District (GRID) had a lien for special assessments on the approximately 1,000 lots of Units 6 and 7, which assessments were levied to pay off GRID bonds sold to cover off-site improvements of Units 6 and 7. The assessments were delinquent and GRID had instituted foreclosure proceedings against Sierra to enforce its lien. In addition, the majority of lots in Unit 6 had been sold to third parties, some of whose installment contracts are held by the Trust, and there was a serious possibility that the buyers would default on their contracts or institute litigation against Sierra for the completion of the off-site improvements. Similar action was also possible from owners of lots in Unit 7.

(2) Sierra had entered into agreements with Sierra Pacific Power Company (Pacific Power) to pay the utility company its cost in providing electrical facilities to Units 6 and 7. Sierra provided Pacific Power with payment and performance bonds issued by Argonaut Insurance Co. (Argonaut) guaranteeing payment to Douglas County, Nevada for such work. Valley Bank issued an irrevocable letter of credit to Argonaut providing for payment to Argonaut of amounts up to \$1,100,000 in the

event Argonaut, as surety was required to pay any sums under the terms of the payment and performance bonds. The Trust issued an irrevocable letter of credit in the amount of \$1,100,000 providing for reimbursement to Valley Bank of any sums paid by Valley Bank to Argonaut. Thus, the Trust had potential liability for the full \$1,100,000 since the off-site improvements had not been completed and Douglas County had not been paid.

(3) Valley Bank was threatening to institute proceedings against Sierra and possibly the Trust for payment of the delinquent \$2,600,000 loan. Sierra advised Valley Bank that it would seek protection of the bankruptcy laws thus jeopardizing to the Trust not only recovery of value from the Gardnerville/Comstock properties, but of other Sierra-derived properties as well.

(4) Units 8 and 9 had not been developed, mapped or zoned, and the local government had indicated that these units would probably not be favorably considered for development until Units 6 and 7 are completed and the GRID and lot purchasers' problems are resolved.

The Bank determined that the Gardnerville/Comstock transactions were necessary and prudent in order to attempt to recoup value to the Trust from the property and to eliminate the contingent liabilities of the Trust described above.

The Bank did not reduce to dollars and cents the net expected outcome from engaging in the Gardnerville/Comstock transactions. The vast number of contingencies involved would certainly make any projection a "guesstimate", at best. However, the Bank must have had at least some range of amounts that it expected to recover for the Trust as a result of these transactions, and, once again, that projected recovery figure

would have a bearing on whether the transactions were prudent. If the Department decides to seek further information it may wish to acquire additional data from the Bank as to expected net gain on the property.

Carson Valley Country Club and Sidney Wyman Receivable

The exemption report filed February 9, 1979 reported two separate and unrelated transactions. The first transaction relates to the Carson Valley Country Club and the second to the Sidney Wyman \$800,000 receivable.

The first transaction involved the ownership transfer of 50% of the outstanding shares of capital stock of Carson Valley Country Club, Inc. (Carson Valley), a Nevada corporation whose principal assets are an 18-hole golf course and adjacent land on the north edge of the Gardnerville/Comstock property, to the Trust from Charter Builders, Inc., a wholly owned subsidiary of Sierra. The Trust had earlier taken possession of the Carson Valley shares as security for the Trust's loans to Sierra. The Bank determined that ownership of the stock was in the best interest of the Trust and entered into an agreement with Shenker and Sierra dated January 10, 1979 providing for ownership transfer.

Ownership of the remaining Carson Valley shares is held by C. E. "Red" Swift, a developer living in the Tahoe Comstock area and one of the original owners of the development land. Carson Valley has sustained losses of over \$130,000 since Sierra acquired the stock. Book value of all the stock per an unaudited August 31, 1977 balance sheet was \$211,000. The underlying property of Carson Valley was appraised as of February 14, 1978 at \$175,000.

The reasons advanced by the Bank for the transaction included its belief that:

- (1) the value of Carson Valley to the Trust is increasing due to the development of Gardnerville/Constock;
- (2) Carson Valley may offer an attraction to purchasers of lots in Gardnerville/Constock; and
- (3) there is a possibility of sale of the Carson Valley property to a private party or municipality. The Bank indicated it acquired the stock in order to control the disposition of the Carson Valley property.

The second transaction included in the February 9, 1979 report involves the assignment to the Trust of Sierra's rights to:

- (1) \$750,000 in U.S. Treasury Notes, purchased by Sierra from proceeds of a loan from the Trust, which were entrusted to Sidney Wyman for safekeeping; and
- (2) a \$50,000 advance to Sidney Wyman made by a check dated April 29, 1975.

Sidney Wyman died January 26, 1978 and his will is presently in probate. The Trust entered a claim against his estate for \$800,000.

The Bank's reasons set forth in the report for engaging in the transaction were that no liability accrued to the Trust in taking the asset and the assignment allows the Bank to pursue the return of value from the receivable.

Volcano Cliffs, Meadow Lake and Lake Shore Highlands/Elephant Butte

The exemption report dated May 1, 1979 details transactions involving notes and mortgages held by the Trust on three different properties known as Volcano Cliffs, Meadow Lake and Lake Shore Highlands/Elephant Butte.

With respect to the Volcano Cliffs property, which is vacant land located approximately seven miles northwest of Albuquerque, New Mexico, the Trust held a \$2,000,000 note and a mortgage on that portion, 750 acres, of the property lying above an escarpment. Another 214 acres of the property lies below the escarpment. The property was owned by Palm Development Corporation (Palm), a wholly owned subsidiary of S & F Corporation (S & F) which is owned by Shenker and members of his family. In contemplation of advances to be made by the Trust to Sierra and in turn by Sierra to Palm, Palm executed the \$2,000,000 note dated June 22, 1976 payable to Sierra and a mortgage dated July 20, 1976 and recorded July 22, 1976 on the Volcano Cliffs 750 acres above the escarpment. ~~The mortgage was junior to a mortgage held by First National Bank in Albuquerque (First National) on both the upper and lower portions of the property.~~ Sierra endorsed the note to the Trust and executed an assignment dated August 24, 1976 and recorded September 8, 1976 by which it assigned to the Trust the mortgage securing the note. Pursuant to the agreement with Sierra, the Trust advanced a total of \$753,046.75 to Sierra which in turn advanced all or part thereof to or for the benefit of Palm.

First National subsequently initiated foreclosure proceedings on the entire Volcano Cliffs property and the Bank appeared to defend the Trust's interest and also filed a cross-claim to foreclose the Trust's junior mortgage, to obtain a determination that its mortgage should cover the lower-214 acres as well as the upper 750 acres, and to declare invalid a mortgage of record purporting to encumber the lower 214 acres in favor of D. W. Fall (Fall), a director and officer of Palm and S & F and a business associate of Shenker.

On April 3, 1979, the Bank received \$898,179.54 (\$753,046.75 principal and \$145,132.79 interest) constituting payment in full of all amounts owed under the Palm note secured by the Volcano Cliffs property. (The payment was made possible due to a sale of the lower portion of the property to a developer.) Accordingly, the Trust cancelled and surrendered the note and released the Volcano Cliffs mortgage as well as any claim to a mortgage on the lower portion of the property. Also released and reassigned to Palm were contracts by which Palm had sold lots on the upper portion of Volcano Cliffs to third party purchasers. The litigation involving the property, including the foreclosure action of First National and the Trust's cross-claim, was dismissed on April 3, 1979 as a result of the dispositions described.

The Meadow Lake transaction is similar to the Volcano Cliffs transaction. S & F owns a tract of vacant land located approximately 25 miles south of Albuquerque, New Mexico. In contemplation of advances similar to those described above respecting Volcano Cliffs, S & F executed a note dated June 22, 1976 for \$500,000 payable to Sierra and a mortgage dated July 20, 1976 and recorded July 23, 1976 on the Meadow Lake property to secure the note. Sierra in turn endorsed the note to the Trust and executed an assignment dated August 24, 1976 and recorded September 7, 1976 by which it assigned to the Trust the mortgage securing the note. The Trust advanced \$44,914.47 to Sierra with respect to the note and mortgage, and Sierra in turn advanced all or part thereof to or for the benefit of S & F.

On April 3, 1979, the Bank received \$53,076.73 (\$44,914.47 principal and \$8,162.26 interest) constituting payment in full of all amounts owed

under the S & F note secured by the Meadow Lake property. Thereupon, the Trust cancelled and surrendered the note and released the Meadow Lake mortgage. Also released and reassigned to S & F was a contract by which a lot in Meadow Lake had been sold to a third party purchaser.

The Bank also received on April 3, 1979, the sum of \$15,000 as partial payment of attorneys fees, costs, and expenses. That sum represents the maximum amount which the Bank believed, upon advice of counsel, would be allowed by the New Mexico courts as a lien against the property affected by the mortgages. It is the position of the Bank that the remainder of the fees, costs, and expenses attributable to Volcano Cliffs and Meadow Lake represent amounts for which Sierra and Shenker remain liable.

With respect to the Lake Shore Highlands/Elephant Butte transaction, it too follows the Volcano Cliffs pattern. S & F owns vacant land located near Lake Shore Highlands in Sierra County, New Mexico, and certain additional property, consisting of a golf course and subdivision development north of Truth or Consequences, New Mexico. In contemplation of advances similar to those described for Volcano Cliffs and Meadow Lake, S & F executed a note dated May 14, 1977 for \$1,500,000 payable to Sierra and a mortgage securing the note dated May 14, 1977 and recorded May 19, 1977 covering the Lake Shore Highlands property and a portion of the Elephant Butte property. Investigation by the Bank revealed that the Trust had never advanced any funds with respect to this note and mortgage.

The Bank on April 3, 1979 released the unfunded \$1,500,000 mortgage of S & F relating to Lake Shore Highlands and a portion of Elephant Butte and cancelled the related note. It should be noted that the property at Elephant Butte is a portion of the property which is the

subject of another mortgage given by S & F to Sierra and in turn assigned to the Trust to secure principal indebtedness of S & F totalling \$500,000. The \$500,000 note and mortgage are still held by the Trust and are not affected by the transaction herein reported.

The Bank's reasons for engaging in the Volcano Cliffs, Meadow Lake, and Lake Shore Highlands/Elephant Butte transactions described above were to accept payment of amounts due the Trust and release satisfied or non-existent debts.

The CHAIRMAN. Mr. Stern, we appreciate having your testimony today. It has been enlightening.

Mr. STERN. Thank you, Senator.

The CHAIRMAN. We will call Mr. Ian Lanoff at this time.

Mr. Lanoff, would you raise your right hand? Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LANOFF. I do.

The CHAIRMAN. Thank you.

During these appropriate times you were Administrator of the pension and welfare benefit program; is that correct?

STATEMENT OF IAN LANOFF, FORMER ADMINISTRATOR, PENSION AND WELFARE BENEFIT PROGRAM, U.S. DEPARTMENT OF LABOR

Mr. LANOFF. That is correct.

The CHAIRMAN. This is the job that Mr. Clayton now has?

Mr. LANOFF. Yes, Mr. Chairman.

The CHAIRMAN. What job did you hold prior to coming to the Labor Department?

Mr. LANOFF. I was a member of the Labor Committee staff. I advised Senators Williams and Javits, particularly on ERISA matters.

The CHAIRMAN. I see. What did you do before that?

Mr. LANOFF. Before that I was general counsel of the United Mine Workers health and retirement funds. I was hired by the reform board that was established after Tony Boyle was removed as president of the United Mine Workers.

The CHAIRMAN. Had you worked for any other unions?

Mr. LANOFF. Yes; before that I was house counsel of the Teamsters Union.

The CHAIRMAN. What were your responsibilities with respect to the Department's enforcement case against Morris Shenker?

Mr. LANOFF. As Administrator, I was the client who had overall general responsibility for running the enforcement program in the Department.

The CHAIRMAN. In an interview with Messrs. Gill and Phillips of the committee staff on February 2 of this year, you stated that, "Monica was in charge." Is that an accurate description of your relationship with the Solicitor's Office, Mr. Lanoff?

Mr. LANOFF. I do not recall stating that Monica was in charge. What Ms. Gallagher and I had was a lawyer/client relationship. She advised me, and I made decisions on policy matters on matters involving enforcement cases.

The CHAIRMAN. Did you ever oppose her in any of the approaches with regard to this particular matter?

Mr. LANOFF. I just cannot recall. I recall seeing one memo where Mr. Kane reported a vote on the issue of whether or not to ask for a notice provision in the arrangement with one of the investment managers, and I believe I voted on the other side of the that, according to the memo. I just cannot recall. I imagine from time to time there were differences that we had.

The CHAIRMAN. But other than that, you felt like most of the other time you agreed?

Mr. LANOFF. I think to a large extent I agreed with her advice. I have a very high regard for her legal ability.

The CHAIRMAN. In this same interview with the committee staff you stated, "In my opinion, Morris Shenker stole \$40 million from the fund." Is this an accurate representation of your statement?

Mr. LANOFF. I would say that is an accurate summary of the way I viewed this from the start until today; yes, it is.

The CHAIRMAN. What did the Department do to retrieve what you described as this stolen money?

Mr. LANOFF. Before I began my service as administrator, the Department filed suit against the trustees of the funds and against Mr. Shenker in order to recover the moneys. I believe before I arrived the agreement was reached whereunder the investment manager was appointed and approved by the court to take over the management of the assets that Morris Shenker left in the fund.

The CHAIRMAN. You worked on the drafting of ERISA as a member of the staff of this committee; is that correct?

Mr. LANOFF. No; that is not true, Mr. Chairman. I worked here after ERISA was enacted. I was part of really an oversight program that the then-chairman, Senator Williams, and the ranking minority Senator, Senator Javits, had established here.

The CHAIRMAN. Looking at what has happened in this case, would you agree with me that we ought to amend ERISA to add criminal penalties, especially with regard to prohibited transactions?

Mr. LANOFF. I think it is one of the things that should be considered. I, personally, as Administrator, was as dedicated as anyone could be to the strong enforcement of the law against trustees and service providers of plans who were violating the law. I think to some extent I have suffered frustrations because of the limits in the current law.

One of the things I did in connection with my discussions with the incoming officials of the Reagan administration, when we held discussions about Senator Nunn's antiracketeering bill, was to recommend that we give serious consideration to not only accepting some of the proposals in that bill but thinking about adopting criminal provisions in ERISA itself.

The CHAIRMAN. So you would not object to having criminal provisions put into ERISA, especially in light of this case and maybe some others?

Mr. LANOFF. I think not. It would depend on what they were, but certainly it is worth serious consideration.

The CHAIRMAN. You were serving at the Labor Department. Did you ever come before this committee and ask that criminal sanctions be placed within ERISA?

Mr. LANOFF. I just cannot recall, Mr. Chairman, whether I did or not.

The CHAIRMAN. I understand that you recommended to Mr. Clayton last year before you left that probably you should have criminal sanctions in the law.

Mr. LANOFF. Yes. I believe I also made the same recommendation to Mr. Dotson, the new Assistant Secretary.

The CHAIRMAN. Let us look at some of the civil remedies that might have been available to you under existing law in this case. One is a preliminary injunction that might have forced Mr. Shenker to pay up or go into bankruptcy and risk losing the Dunes Hotel. Another is pressuring the fund into calling in Shenker's loan guarantees.

In retrospect, Mr. Lanoff—and it is always easier to do it in retrospect, in all fairness to you—would not either or both of these remedies have been preferable to the course of action that really was followed by the Labor Department?

Mr. LANOFF. It is quite difficult to say. I would say as a matter of policy, both in the previous administration and in this administration, the Department's main concern has been to preserve assets. In connection with that objective, the Department has adopted the policy of seeking, wherever possible, to remove trustees from their handling of funds where the Department has previously concluded that they were not—

The CHAIRMAN. But here in this case, not only did you not remove trustees, you did not go after the Shenker loan guarantees, nor did you ask for a court-approved, court-supervised trustee or supervisor.

Mr. LANOFF. The policy has been to ask for just the kind of investment manager that was appointed in this particular case. In the recent *Grumman* case, the Department convinced the court to appoint an independent manager to manage the assets of the Grumman plan.

In a recent case last year that the Labor Department won, the *Mazzola* case involving the Pipefitters and Plumbers Pension Fund out in California, a similar remedy was sought and gained from the court in addition to \$400,000 in personal liability from the trustees back to the fund.

The CHAIRMAN. In retrospect, you can see where these two remedies, among others, might be very appropriate remedies in a case like this.

Mr. LANOFF. I think one of the good aspects of the civil remedial structure of ERISA is that it does provide so much flexibility to the Department. I was not at the Department at the time the decision was made to proceed in this way, I do not believe. I do not recall being involved in any of the discussions leading up to it.

It seems to me that the taking away of the management of these assets from the trustees and giving them to a court-appointed investment manager was quite an accomplishment on the Labor Department's part.

The CHAIRMAN. I see.

In your February 2 interview with my committee staff, you stated, "When someone wants to diddle the Government and drag these cases out, they can do it."

Mr. LANOFF. That is one of the problems with the civil remedies. For example, I can recall that in this particular case the defense counsel tried to take my deposition and the deposition of some of the other Labor Department officials in order to prove, as they alleged, that we were prejudiced against Mr. Shenker. That is the kind of frivolous type of tactic that defense counsel engaged in in

this particular case. It is an example of the kinds of things that defense counsel can do.

The CHAIRMAN. As you know, the approach that was taken, of course, was to appoint an investment manager to improve and liquidate the Shenker properties. All parties of the lawsuit, including Labor, agreed to do that in lieu of the preliminary injunction. That is correct, is it not?

Mr. LANOFF. As I understand it, that is right.

The CHAIRMAN. On October 10, 1978, Mr. Ed Stern, who testified here this morning, hand-delivered to your office a memorandum outlining some of the preliminary findings of what was to become the Ken Marshall report.

Among these findings was one that the trust takeover of the Sal-La-Sea property in Oregon would result in the loss of at least a third to a half of a million dollars at best, with a loss of several million dollars a reasonable likelihood. What was your reaction to Mr. Stern's observation at that time?

Mr. LANOFF. I took all of Mr. Stern's observations seriously. While I did not consider him an expert on fiduciary matters or on real estate, I did consider him an expert in terms of understanding Government processes and procedures. That was his job. That is why he was invited to participate in the discussions in this particular case.

So to the extent that he was warning me that he felt that the Department was not adequately considering some of the aspects of this particular case, I took that quite seriously. I acted based on that memo and for other reasons shortly thereafter, wrote to Mr. Hoffman, the lawyer who was representing the investment manager at that time, UAB. I told Mr. Hoffman that the Department was insisting that the UAB not proceed with transactions that it was proposing to engage in, until we had time to further investigate what was occurring. That happened, according to my file, on October 16, 1978—a letter from myself to Mr. Hoffman.

The CHAIRMAN. You were the one who ordered the Fite report written; is that correct?

Mr. LANOFF. It is interesting. When I was interviewed by your investigators, Mr. Chairman, they kept referring to the Fite report. Quite frankly, I did not even know what they were talking about; I just could not recall.

It seems that what they were talking about, as I understand it, was actually a Lebowitz report.

The CHAIRMAN. I see. It was prepared by Ms. Fite.

Mr. LANOFF. Right. What they were talking about was a report dated July 2, 1979, where Mr. Lebowitz concluded that he disagreed with Mr. Marshall's conclusions as reported in one of Mr. Marshall's memos.

The CHAIRMAN. I see.

According to an April 3, 1978, memo from Mr. Kane to Mr. Daly concerning the takeover of this property, "The fund will now invest approximately \$1.3 million to protect a \$300,000 investment in land that is appraised at \$930,000." Were you familiar with this assessment?

Mr. LANOFF. I do not recall that. Until yesterday, when I took a look at the memo that Mr. Kane, I guess, provided to the commit-

tee, I was not familiar with that particular memo. I just have no recollection of receiving that memo.

The CHAIRMAN. We will put Lanoff documents No. 1 and No. 2 into the record at this point, without objection. One is, of course, an April 3, 1978, memorandum for Edward F. Daly from Thomas Kane, and the other is the Seaview Village, Inc., Timbershore, analysis of the property composed of 530 acres.

[The material referred to follows:]

1 FEB 1978

MEMORANDUM FOR: J. Vernon Ballard
Deputy Administrator

FROM: Edward F. Daly, Director
Office of Enforcement

SUBJECT: Southern Nevada Culinary Pension Trust Fund
Las Vegas, Nevada
Case No. 72-6118

Carroll
Document
#1

Attached is a copy of a memorandum dated January 17, 1978, that was just received from the Los Angeles Area Office. Enforcement was aware that this memorandum was being sent by the LAAO.

The LAAO requests guidance from the NO concerning the captioned case. It appears that FWBP and SOL must have a meeting in order to render guidance to the LAAO. The most pressing questions posted by the LAAO are:

1. Do we work with the Justice Department in compiling evidence for a criminal investigation?
2. Do we turn over our files to the Department of Justice for them to "go it alone"?
3. What is the priority of this case since SOL stated it would not go to trial for another year?

Steve Allen (SCL)
cc-Los Angeles AO
San Francisco RO
Enforcement
Kane

PWBP:TFKane/dkt 2/1/78

BUREAU SYMBOL NO.	INITIALS	DATE
DRE	R	2/1/78

12 JUL 1979

Lanoff
Document #2Daly
UAB

MEMORANDUM FOR: Ian D. Lanoff
Administrator

FROM: Edward P. Daly, Director
Office of Enforcement

SUBJECT: Southern Nevada Culinary and Bartenders
Pension Trust, Las Vegas, Nevada
File 72-6118

The following is a very brief recapitulation of points which create scepticism on the part of members of the Office of Enforcement as to the "work outs" being performed by the appointed Asset Manager, Upper Avenue Bank (UAB). The appointment of UAB was approved by the USDC, Las Vegas, Nevada, since DOL did not object to this appointment for the Southern Nevada Culinary and Bartenders Pension Trust (Culinary Fund).

The Culinary Fund is involved in the following loans and contingent liabilities with Morris Shenker and his corporate entities:

I. MURRIETA HOT SPRINGS (100% Owned Shenker Entity)

a. Loan #1	\$2,000,000	
b. Loan #2	5,000,000	
c. Interest earned, not collected through February 28, 1977	1,169,200	
d. Non-book Real Estate Warehousing Loan at Valley Bank	<u>2,240,000</u>	\$10,409,200

II. SIERRA CHARTER CORPORATION (100% Owned Shenker Entity)

a. Loan	\$7,450,000	
b. Loan-Addendum One	1,350,000	
c. Loan-Addendum Two through February 28, 1977	8,660,000	
d. Interest earned, not collected through February 28, 1977	2,058,100	
e. Non-book guaranty of unsecured corporate debt at Valley Bank	2,100,000	
f. Irrevocable Letters of Credit	<u>1,595,200</u>	\$23,213,300 <u>\$33,622,500</u>

BUREAU SYMBOL NO.	INITIALS	DATE
DRE	PL	7/11/79

The Culinary Fund guaranteed the above obligations of Murrieta Hot Springs (MHS) and Sierra Charter Corporation (Sierra).

It should be noted that the loan of \$7,450,000 set out above was entered into on June 7, 1974, and was personally guaranteed by Shenker.

On December 1, 1975, a Second Addendum was entered into between the Culinary Fund and Sierra. Sierra agreed to guarantee all of MHS's debts to the Fund and Shenker personally guaranteed all additional advances to Sierra in addition to his guarantee of the original loans.

Another entity involved in the development of land by Shenker is the Gardnerville Ranchos Improvement District (GRID). GRID issued approximately \$6 million in special assessment bonds which were to be used for construction of improvements - i.e., sewers, roads, utilities, etc., on the land in the Gardnerville District owned by Sierra. Sierra had contracted with GRID to do the improvements while preparing the land for marketing. GRID agreed as long as the personal guarantees of Shenker and Stanley I. Franklin, former president of Sierra, in the amount of approximately \$5.5 million were included in the contract. Shenker and Franklin agreed. Sierra then subcontracted the work to Environmental Communities, Inc. (ECI), which was Shenker controlled. ECI failed to complete the assessment work but managed to receive almost all of the bond funds before declaring bankruptcy. It should be noted that C. E. "Red" Swift, who was involved in other land deals with Shenker, was in a GRID District position which approved the disbursement of the GRID funds to ECI prior to and at the time of the ECI bankruptcy.

From the above it appears that Shenker and Franklin are personally liable for \$5.5 million of the GRID bonds which are in default.

According to the present plan entered into by the UAB, the builder, M. Paul Heck, will receive a loan of \$3.6 million from the Valley Bank of Nevada to complete the work necessary in order to build and market the Gardnerville land covered by the GRID bonds. The Culinary Fund will subordinate its first position on this land to the Valley Bank. Heck, the developer, must purchase at least 200 lots per year and remit \$12,000 per lot to the Culinary Fund. Heck will provide all marketing, contracting, and other overhead services. The \$12,000 forwarded to the Culinary Fund will be distributed as follows:

\$3,500	-	GRID bonds
4,320	-	Valley Bank (\$3.6 million loan)
2,090	-	Principal on the \$1.6 million Sierra balance
2,090	-	Pension Trust (up to 1/2 paid to Valley Bank
<u>\$12,000</u>		on \$1.6 million loan if not used for GRID
		assessments and interests)

According to the UAB, there are 1020 unsold lots in Units 6 and 7 in Gardnerville. When 800 lots are sold, the Valley Bank will be fully paid.

Previously, the UAB entered into a land deal which will necessitate the further use of Culinary Fund funds. This land deal involves Seaview Village, Inc., which contains approximately 530 acres in the vicinity of Lincoln City, Oregon. This land was purchased by Sierra for \$3,000 cash and the assumption of over \$850,000 in liens. The UAB had this land appraised and it is valued at \$930,000. With additional cost necessary to get this land platted and ready, the UAB will involve the use of Culinary Fund funds in excess of \$1 million.

It should be noted that the \$850,000 in liens on this land was assumed by Sierra, which is 100% owned by Shenker.

Both of these land transactions appear to benefit Shenker more than the Culinary Fund. Both of these transactions appear to be "orchestrated" by Shenker, not UAB.

The Office of Enforcement believes that the UAB should obtain the personal guarantee of Shenker and return to him all the land with their liens and debts. After all, he negotiated the land deals for Sierra and used the Culinary Fund funds for purposes other than what the Culinary Fund expressly intended. The Culinary Fund initially disbursed the funds to assist Sierra in the marketing of the MHS land. Shenker used the funds to purchase other land from other Shenker entities and associates who received the cash and the Culinary Fund got inflated debts in return.

The Office of Enforcement believes that DOL should take some immediate action in this matter before the assets of the Culinary Fund are further dissipated by Shenker manipulations.

cc-Ballard

Burghardt (SOL)
San Francisco RO
Los Angeles AO

Enforcement
Chron

PWBP:TFKane/dkt 7/11/78

U.S. DEPARTMENT OF LABOR
EMPLOYMENT SECURITY ADMINISTRATION



April 3, 1978

MEMORANDUM FOR: Edward F. Daly, Director
Office of Enforcement

FROM: Thomas F. Kane, Chief
Division of Reporting Enforcement

SUBJECT: Southern Nevada Culinary and Bartenders
Pension Trust Fund (Case No. 72-6118)

Row
Committee Document #26

Attached is a copy of CO Sam Clark's memorandum report dated March 27, 1978, concerning the results of his investigation into the proposed transaction by the Upper Avenue Bank (UAB) as set out in the UAB letter dated March 15, 1978.

After a review of CO Clark's memorandum report, the writer still believes that DOL should file a legal objection to this proposed transaction which the UAB is still prepared to undertake. DOL had sent a letter dated March 20, 1978, to the UAB which objected to this transaction because of the lack of information concerning the proposed transaction. The writer was advised that there was another objection to this proposed transaction that the UAB received from one of the trustees of the Pension Trust.

The writer recalls that the Pension Trust has invested \$3,000 cash through Sierra Charter Corp. (Sierra) and Sierra had assumed liens and notes on the property in question amounting to approximately \$1.2 million. Sierra is a 100% owned entity of Morris Shenker and his family. The fund now will invest approximately \$1.3 million to protect a \$3,000 investment in land that is appraised at \$930,000. The UAB states it can sell this property for \$1.8 million, twice its appraised value, yet it has no firm commitment to sell at this price. The investment of \$1.3 million to save a \$3,000 investment does not appear to be prudent to the writer.

Another interesting point is that the Secretary of Labor is a fiduciary in this transaction because of the legal documents signed in this matter wherein the Secretary exercises control over the disposition of fund assets involving transactions of \$100,000 or more. Suppose a participant files a legal action for breach of fiduciary duty on the part of the UAB, Trustees, and Secretary of Labor and there is a loss on this transaction. Will the Secretary of Labor be held responsible for one-third of the total loss incurred? This transaction is just one of at least 10 transactions that will involve over \$100,000.

DOL should protect itself from all possible claims arising from this matter.

cc-San Francisco RO
Los Angeles AO
Judy Burghardt (SOL)

The CHAIRMAN. On January 9, 1979, Mr. Stern wrote you that the bank's reports to the Labor Department were, "difficult to understand," and that PWPB staff analysis of these reports have led to conclusions, "far different from those that the reports seem to suggest on their face." Did you take any action with the bank to remedy this situation, Mr. Lanoff?

Mr. LANOFF. I guess I was confused by what was going on at the time, because I received that memo from Ed, who was telling me that it represented his views and perhaps the views of Mr. Marshall, but then on January 15, 1979, I received a memo signed off on by Mr. Marshall which did not raise any objections to the transactions that we are discussing here. It was signed by Mr. Marshall and Mr. Eccles of the Solicitor's Office, and it summarized the meeting that Mr. Marshall and Mr. Eccles had attended at my request with representatives of the investment manager. The memo goes on for four pages to describe the discussion of Mr. Heck's suitability as the developer and describes the arguments of the Upper Avenue Bank in favor of proceeding with the transaction and lists all the arguments in favor of it, the implication clearly being, at least to me, that Mr. Marshall was now satisfied with the explanation of the bank with respect to its arguments for proceeding with this particular transaction.

Earlier in October, I may have mentioned, shortly after Mr. Stern talked to me, as I said, I wrote to Mr. Hoffman asking him to hold off on proceeding with the transactions.

Shortly after receiving this Marshall memo, I wrote to Mr. Hoffman, based on the memo and based on other things that I had learned from the UAB about its investigation of this, based upon other guarantees that it had added to the transaction to protect its interests and the plan's interest in Mr. Heck's development—I wrote to Mr. Hoffman and released the UAB and said that the Department would not object to it proceeding with the transaction.

It was only 3 months later that I received the second memo from Mr. Marshall, which he calls a draft, so it was not even a final memo—the latest draft—and which he says in the introduction is probably moot, because it has taken him so long—I am paraphrasing, not reading from it—to get me the report that I had asked for, as Mr. Stern testified today, I believe in December.

The CHAIRMAN. OK. Could we have a copy of that one memo that you were referring to there?

Mr. LANOFF. Certainly. It is my only copy.

The CHAIRMAN. OK. We will make a Xerox for you.

[The material referred to follows:]

APR 2 1979

MEMORANDUM FOR:

J. VERNON BAIRD
Deputy Administrator, FARD

FROM:

KENNETH J. MARSHALL *KJM*

Re:

Southern Nevada Culinary Workers and
Bartenders Pension Trust

I have been asked to provide a written report setting forth certain findings with respect to my analysis of the Culinary Workers Pension Trust. The attached report represents the latest draft of that analysis to date. The conclusions are basically identical to those which were presented at various staff meetings from September of last year through January of this year. I have reviewed all the relevant documents and reports once again to be sure that nothing has been overlooked. Since those initial staff meetings a number of events were to have occurred, including the execution by the Pension Trust of certain contracts to implement the Asset Management Plan. I assume that these events have occurred and that as a result many of the issues raised by this report are moot. If you would like amplification of any particular aspects of the report I will be glad to do so.

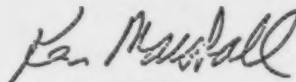
Please note that this analysis and report have been prepared in conjunction with my appointment by Ian Lanoff to a task force specifically to examine this matter and bears no relationship to my position in the Office of Fiduciary Standards or its predecessor organization the Office of Regulatory Standards and Exceptions.

Attachment

SOUTHERN NEVADA CULINARY WORKERS AND BARTENDERS PENSION TRUST

This report consists of:

1. Questions Presented
2. Introduction and Background
3. Analysis and Conclusions
4. Exhibits
 - (A) Reporting Requirements
 - (B) Financial Analysis of Seaview Village/Sal-La-Sea
 - (C) Memorandum Summarizing Analysis of Gardnerville Properties
 - (D) Index of Materials


Ken Marshall

QUESTIONS PRESENTED

- (1) Whether the Investment Manager, the Upper Avenue Bank of Chicago, Illinois has satisfied the reporting requirements of the exemption.
- (2) Whether the Investment Manager has complied with the guidelines for prudent investment outlined in the Asset Management Plan and the general prudence requirement of ERISA.

INTRODUCTION AND BACKGROUND

Any analysis of the questions presented must begin with a discussion of the selection of the Investment Manager and of the Investment Manager's plan to manage the real estate assets of the Southern Nevada Culinary Workers and Bartenders Pension Trust ("the Pension Trust"). The purpose of this report is to analyze the activities of the Investment Manager as reported in the materials listed in Exhibit D to determine whether these activities conform to the Asset Management Plan (the "AMP") and ERISA standards of Prudence and to determine whether these activities have been reported satisfactorily in accordance with the Pension Trust Exemption.

On August 30, 1977, pursuant to the stipulation in the proceedings entitled Marshall et al. v. Schmoutey et al., the Upper Avenue Bank of Chicago was appointed Investment Manager of the Pension Trust. The stipulation directed the Investment Manager to (1) take control of all the Pension Trust's real estate-related assets (deemed to include all loans secured by real estate); and (2) develop an overall plan for the management and/or disposition of the Pension Trust's assets committed to its management.

On March 6, 1978, a proposed asset management plan was submitted by the Upper Avenue Bank as Investment Manager pursuant to the August 30, 1977, stipulation. According to that plan three alternative courses of action were considered by the Investment Manager for management of the assets. First, the Investment Manager could have pursued payment of the delinquent Shenker loans on a long-term basis as apparently had been contemplated when the various loan transactions with the Pension Trust were initiated. A second course of action contemplated a quick liquidation of the loans and the pledged assets for whatever value might be realized in the near term (one year or less).

The Investment Manager selected a third course of action, a program designed to "work-out" the real estate-related loans on a selective asset-by-asset basis. The Investment Manager indicated that this course of action was based on the current actuarial status of the Pension Trust, the condition of the loans and underlying security and the bank's experience in other real estate work-out situations:

This approach sounded plausible. The rationale for this strategy was summarized in dollars and cents at pages 35-36 of the AMP. As indicated the Investment Manager estimated the range of recovery available under an immediate liquidation course of action (alternative #2) as \$4 million to \$5 million before contingent liabilities and indicated that this course of action provided the least degree of protection with respect to the contingent liabilities of the Pension Trust.

The estimated range of recovery anticipated by the Investment Manager under the recommended work-out program was \$10 million to \$16 million before contingent liabilities. According to the Investment Manager this course of action provided much better protection from contingent liabilities, and continuing cooperation from the borrowers and guarantors could have increased the recovery from this estimate.

According to the AMP this overall strategy was to be developed through the following specific guidelines ("Guidelines"):

1. All assets considered available to the recovery program should be protected, consistent with the other guidelines.
2. Additional major Pension Trust investments in real estate should be undertaken, if at all, only when essential, and only when a clear net value to the Pension Trust is a reasonably probable result.
3. Acceptance of assets for the Pension Trust will be undertaken only when the Asset Assumption Checklist has been reviewed by legal counsel, and an appropriate opinion from legal counsel is received by the Investment Manager.
4. Development of real estate requiring financial and physical contributions will be done by others or in joint venture with others.
5. Potential liabilities of the Pension Trust will be deferred to the greatest extent possible and fully defended.
6. Non-real estate assets which may be available to the Pension Trust will be diligently collected.

According to the AMP these Guidelines were to continue to be used during the implementation of the Plan with emphasis on the need, (1), to restrict to a prudent minimum further expenditures of monies from the Pension Trust in aid of the assets or to preserve value that may lie therein, limiting such expenditures to assets in the possession or control of the Pension Trust, and (2) to assure that in any future course adopted, the Investment Manager preserves the Pension Trust's position and remedies with respect to those entities and individuals with whom the loan and guarantee transactions have been made.

The AMP indicated the following additional parameters:

"It is not considered prudent for the Pension Trust to be a "developer" in the sense that it would undertake long-term, highly entrepreneurial risks, and itself invest large, additional sums in the projects."
(AMP at p. 23).

"By ERISA diversification standards, the Pension Trust would reduce its investment in real estate, and investing additional dollars in these real estate assets will not assist in that objective."
(the AMP at p. 27)

The AMP continues:

A. The following assets appear to have the largest potential for recovery and will be managed for realization of maximum return achievable without additional investment of Pension Trust resources beyond that which would constitute a prudent risk within the guidelines established by the Investment Manager:

- Murrieta Hot Springs, California (real estate)
- Genoa Peak, Nevada (real estate)
- Units 8 & 9-Tahoe Comstock, Nevada (real estate)

B. The following assets will be protected through appropriate legal action, negotiation, and minimal cash investments in an attempt to bring them to a condition permitting them to be transferred to category A above:

- Land Contracts on Tahoe Comstock, Nevada (real estate)
- Units 6 & 7-Tahoe Comstock, Nevada (real estate)
- Volcano Cliffs, New Mexico (real estate)

C. The following assets will be liquidated as soon as practicable:

- Carson Valley Country Club, Garderville, Nevada (common stock)
- Meadow Lakes, New Mexico (real estate)
- Elephant Butte, New Mexico (real estate)
- Home Savings & Loan Association (common stock)
- Capital Reserve Corporation (common stock)
- Morris Shenker (unsecured note)
- IJK of Nevada, Incorporated (unsecured note)

With respect to the Pension Trust's future relationships with Morris Shenker the AMP states:

The cooperative mode of operation (that is the "work-out" of the real estate assets) is based squarely on Shenker's expressed willingness to do all he can to assure that the Pension Trust does not suffer loss on the loans. He has made representations of his intentions to refinance his holdings if possible, to sell other assets to raise cash for loan reductions, and to pledge assets as additional security for the loans and as security for his personal guarantee. The Investment Manager believes that it is in Shenker's best interest to pursue such a course of action. (Continued)

In oral conversation, Shenker has agreed to a program of cooperation which is quite specific. Letters of intent are under consideration with him. The Investment Manager presently feels the letter of intent should provide for a transfer to the Pension Trust of certain additional assets; a transfer to an escrow account, subject to the Pension Trust's direction, of assets already pledged or assets promised to be pledged to the Pension Trust; a repayment program on certain notes payable which are assigned to the Pension Trust; a confirmation of guarantees and a collateralization of the guarantee of Shenker; and, in the event of liquidation or transfer of other assets owned by Shenker or affiliated companies, payment to the Pension Trust of a portion of the proceeds. In return, the Investment Manager would consider a reduction of the interest rate on past and future interest to 6% simple interest per annum and an agreement to forestall legal action by the Investment Manager so long as cooperation continues and there remains the reasonable potential for realization of additional recoveries of a substantial nature. The acceptance or non-acceptance by the Investment Manager of this or any other program or terms of cooperation in its entirety will greatly rely upon the value of the additional collateral actually provided by Mr. Shenker to secure his guarantee.

This course of action implies no obligation upon the Pension Trust to become active in the development of real estate.

In the event the cooperative course of action outlined above should collapse, or it should become apparent that achievement of maximum value for the loans made by the Pension Trust is not probable, the Investment Manager would seek to obtain control and ownership of the collateral assets. Accordingly, foreclosures would be undertaken on the various collateral properties and assets and other types of relief would be sought in order to perfect the Pension Trust's interest in, and to gain control of those collateral assets which can be converted by the Investment Manager into value.

If other approaches fail or are exhausted, action will be taken against Sierra, Murrieta, Shenker and others to reduce to judgment the amounts not recovered in implementing the Plan, and taking such actions as then may be appropriate to collect on such judgments. The Investment Manager intends to cause such a course of action to be initiated and carried out in a manner that will best serve the interest of the Pension Trust at that time.

It should be noted that total loans to Morris Shenker and Affiliates in default including accrued interest at March 1, 1979, approximate \$35.7 million.

ANALYSIS AND CONCLUSIONS

Compliance with Exemption Reporting Requirement (See exhibit A explanation of various reporting requirements)

The exemption calls for a written report to the agencies within 30 days after each transaction with a party in interest. The report must include a description of each transaction and an explanation of why the transaction is in the interest of the Pension Trust.

The transactions reported pursuant to the exemption primarily involve Morris Shenker and Affiliates who owe the Pension Trust in excess of \$35 million. While the reports explain, in general terms, these transactions they do not provide sufficient information to enable one to judge the appropriateness or advisability of the transactions. In other words, the reports state that the Investment Manager has selected the best course of action and provide some rationale for such actions, but do not demonstrate that the selected course of action is superior.

The absence of any analysis of the various alternatives available to the Pension Trust prompted several members of the staff to analyze the available raw data (appraisals, title searches, etc.) in an effort to confirm through financial analysis that the selected course of action (the so-called "work-out") was in fact superior and in the best interest of the Pension Trust.

Whereas the Investment Manager estimated the range of recovery as \$10-\$16 million before contingent liabilities (in the AMP), the staff's analysis of the three major groups of properties indicates probable losses of several million dollars and possible losses greatly in excess of that amount. (See exhibits B and C)

Other members of the staff suggested that the Investment Manager may have intended the "work-out" course of action to be an effort to minimize the losses which would occur if either of the other alternative courses of action were selected. This rationale was not expressed in the exemption reports. Quite the contrary. As noted above the Investment Manager estimated that the work-outs would be highly profitable. In summary the following reflects certain observations with respect to the exemption reports:

1. The exemption reports (Investment Manager letters to DOL, August, November and December 1978) do not make clear (they do not even state) the intended or expected outcome of the Sal-La-Sea and Gardnerville deals.
2. The reports, by themselves, do not permit or support an analysis of the possible/probable outcome of the transactions.
3. Analysis of the reports and other materials indicate that losses rather than profits may be expected, contrary to the implications in the reports.
4. If staff analysis is correct the reports omit essential, material information necessary to evaluate the appropriateness of the Investment Manager's investment strategy.

However, failure to present a prima facie explanation of the appropriateness of the transactions may have been due to any of a number of different factors. For example:

1. The Investment Manager may have assumed that a general explanation of each transaction was sufficient, or
2. There was insufficient data to support any particular course of action and as a result a thorough financial presentation was not made, or
3. The Investment Manager did not investigate and analyze alternatives and so was not in a position to support any particular course of action with financial projections.

Factors two and three raise questions concerning the Investment Manager's compliance with the "prudent" guidelines outlined in the Asset Management Plan and with ERISA "prudence" requirements in general.

The following observations reflecting upon the Investment Manager's compliance with these prudence standards were made during the course of analysis of the Pension Trust reports and other materials over the past six months.

1. The "work-out" strategy was supposedly undertaken within the following parameters (from the AMP):
 - (A) Additional major Pension Trust investments in real estate should be undertaken, if at all, only when essential, and only when a clear net value to the Pension Trust is a reasonably probable result.
 - (B) Development of real estate requiring financial and physical contributions will be done by others or in joint venture with others.
 - (C) "It is not considered prudent for the Pension Trust to be a "developer" in the sense that it would undertake long-term, highly entrepreneurial risks, and itself invest large, additional sums in the projects."
 - (D) "By ERISA diversification standards, the Pension Trust would reduce its investment in real estate, and investing additional dollars in these real estate assets will not assist in that objective."

Contrary to these AMP guidelines the Investment Manager has apparently placed considerable additional sums of money at risk with little rationale. Clearly, these are investments in real estate. If a "clear net value" is "reasonably probable", we haven't seen evidence. The only financial contributor in the Heck deal, for example, is in fact the Pension Trust. Heck is contributing no cash whatsoever, so the P.T. is probably in contravention of parameter B. The P.T. appears to be a developer in contravention of parameter C.

2. The work out strategy is not supported by financial analysis or apparently a thorough investigation of probable outcomes.
3. The work-out strategy does not square with the conclusions of Coldwell Banker, a prominent appraiser. For example, the Coldwell Banker appraisal report of Murrieta at page 23 states:

"From an investigation of the market place, the demand for residential housing within the subject locale is not strong enough to support a major development."

The conclusion of Coldwell Banker in its appraisal report of Gardnerville (reported verbatim in appendix to AMP) is:

"Unless sufficient funds can be made available without further burdening the land or unless the outstanding debt can be substantially waived, there is insufficient profit potential to provide an opportunity which would interest a qualified developer. Therefore, existing liens must be negotiated downward, any monies improperly disbursed should be recovered etc., until these activities are complete little value can be placed on units 6 & 7."

4. The selection of M. Paul Heck to develop the properties raise several questions. For example:
 - (A) The Investment Manager apparently failed to adequately investigate the financial condition and previous success/failure of Paul Heck.
 - (B) Failure to take exception to Heck's financial statements, which contain many errors.
 - (C) Failure to question and investigate Paul Heck's assertion that Gardnerville improvements could be completed for \$3 million when previous estimates by professional engineers indicated that as much as \$6 million would be necessary. After being confronted with questions regarding this point the Investment Manager advised the staff subsequently that \$4 million would be necessary. Several hours later the estimate was revised a second time to \$4.5 million.

- (D) As of January 1979 Heck was unable to arrange the construction financing which he had indicated six months earlier was "imminent".
 - (E) The Investment Manager proposed to entrust Heck with complete control of the development and of Pension Trust cash.
 - (F) Heck's planned contribution of cash to the development never occurred. The Pension Trust paid Heck's contributions, provided the collateral for the Heck loan and guaranteed the interest on that loan as well as interest on all other loans outstanding against the properties.
5. The Investment Manager's reliance upon Shenker's oral representation to provide more collateral, reinstate guarantees, etc., seems naive and unwarranted by previous experience with Shenker. The AMP states:

"The cooperative mode of operation (that is the "work-out" of the real estate assets) is based squarely on Shenker's expressed willingness to do all he can to assure that the Pension Trust does not suffer loss on the loans. He has made representations of his intentions to refinance his holdings if possible, to sell other assets to raise cash for loan reductions, and to pledge assets as additional security for the loans and as security for his personal guarantee."

Shenker's promises have not been fulfilled. In fact, it appears that not one dollar nor additional collateral has been received from Shenker. Coincidentally, Shenker's liabilities to the Trust and to third parties are being reduced by further investment of Pension Trust money. The Investment Manager has failed to pursue Shenker in accordance with the AMP.

6. Apparently, the Investment Manager has failed to take a defensive strategy with respect to the so-called contingent liabilities as originally planned in guideline #5:
- "Potential liabilities of the Pension Trust will be deferred to the greatest extent possible and fully defended."
7. Efforts to collect non-real estate receivables have not been fruitful.
8. The Investment Manager's proposal to use the Argonaut Insurance Company to bond the Heck construction project involved questionable judgment in as much as Argonaut defaulted on the previous bond for the GRID construction and caused the liability (possibly as much as \$5.5 million) to be transferred to the Pension Trust. Argonaut's financial condition is also questionable.

9. Outrageous attorneys and advisors fees have been paid by the Pension Trust, primarily in connection with the Gardnerville work-out (in excess of \$1 million the first year). Counsel indicated during the December 27, 1978, meeting that substantial fees would be necessary to develop the other properties as well.
10. The Investment Manager's decision to resign only months after accepting the management position raises questions of professionalism, and
11. It seems that the transfer of the real estate properties from Shenker to the Upper Avenue Bank and now to Karsten, the latest Investment Manager, certainly weakens, whether by design or coincidence, the position of the Pension Trust in any future lawsuits against any of these for mismanagement. (Quite simply, the long-term nature of a real estate work-out would probably make it more difficult to demonstrate that any one particular Investment Manager "caused" the losses by his conduct during the period that the assets were under his management.)

CONCLUSIONS

This analysis was based upon data and information provided by the Investment Manager. Certain data which might have clarified or refuted our analysis of the work-outs (e.g. GRID Bond Audit, GRID Bond Agreement and other relevant documents) was requested from the Investment Manager but the staff was advised that these items were "not available".

In conclusion, it seems that neither the reports nor the management strategy of the Investment Manager have fulfilled the objectives or the reasonable expectations of the exemption and the Asset Management Plan.

Certain practices or conduct of the Investment Manager appear to be contrary to the best interests of the Pension Trust, and inconsistent with the prudent guidelines of the Asset Management Plan and ERISA prudence standards in general. In fact the transactions appear more certain to benefit Shenker and Affiliates than anyone else.

Proceeding without the data or financial analysis necessary to support a particular course of action seems to be a "seat of the pants" approach to investment management. The conduct outlined above in items 1-11 merely reinforces this conclusion.

In conjunction with its appointment, the Investment Manager has apparently been subject to three different reporting requirements:

1. the requirement to provide advance notice to the parties to the August 1977 stipulation for any transaction exceeding a value of \$100,000.00
2. the requirement set forth in the March 28, 1978, amendment to the Proposed Asset Management Plan:

"Specifically, the Investment Manager will provide by the 20th day of each month a report of its activities for the preceeding month to the parties to the stipulation and to the Pension Trust. Such a report will include the following:

- a. A report of each transaction entered into or action taken involving real estate related assets by the Investment Manager, such report to be in reasonable detail and to include the basis for entering into the transaction, including but not limited to, each binding commitment made by the Investment Manager with respect to assets of the Pension Trust and each abandonment, release of, or loss of any interest of or in any asset of the Pension Trust, as well as the filing of any litigation by or against the Pension Trust or its assets.
- b. A report of expenses incurred, including an accounting of the cost of professional advisors as to both fees and out-of-pocket expenses, and the Investment Manager's direct expenditures.

The supporting documentation behind such reports shall be made available on a reasonable basis to the report recipients who request access to such information."

3. the requirement set forth in the exemption:

"The Bank will report to the agencies certain transactions undertaken pursuant to the proposed exemptions. The agencies will review these reports and, if circumstances warrant, take appropriate action to protect the interests of the Pension Trust and its participants and beneficiaries .

The Bank must submit to the agencies a written report within 30 days after consummation of the transaction if the Bank actually knows that the transaction involves a person who is a party in interest or disqualified person as described above. The report must include a description of the transaction, the identification of the party in interest or disqualified person and its relationship to the Pension Trust and an explanation of why the transaction is in the interest of the Pension Trust and its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Pension Trust."

EXHIBIT B

FINANCIAL ANALYSIS OF SEAVIEW VILLAGE (LINCOLN CITY, SAL-LA-SEA)

Conclusion: the so-called "work out" arrangement of the Upper Avenue Bank will apparently result in further losses to the Pension Trust. This analysis is based upon figures set forth in an appraisal report which was prepared for the bank by Coldwell Banker in February 1978. This is the only independent analysis of the property available.

Projected losses (Trust develops property)

- | | |
|---|------------------------------|
| 1. Assuming the most favorable conditions which are portrayed in the appraisal. (Exhibit 1) | \$460,000 expected loss |
| 2. Assuming more likely conditions (Exhibit 2) | \$2-3 million expected loss |
| 3. Assuming worst case (Exhibit 3) | \$7.35 million expected loss |

Analysis of Appraisal - Background

It should be noted that MAI Appraisals are generally ninety percent hyperbole and ten percent fact. The appraisal report of Seaview Village (Lincoln City Sal-La-Sea) is no exception. Facts which are useful to an evaluation of the subject property are buried in pages of prose extolling "beautiful scenery" and "convenience to schools and churches". For example, page seven of the report describes Lincoln City as one of the "fastest growing communities in the state". Although this claim may impress the casual reader, the subsequent paragraph continues with: population figures indicate "an increase of 2 percent over the 1970 census". The rate of increase for Lincoln City's population equals ten (yes, that's 10) persons per year. Amusingly some of this growth may have been due to annexation, since the city apparently has undertaken a policy of annexing neighboring communities. Growth for the entire county (1000 square miles) averaged 300 persons per year or roughly 100 families (based on national averages). (Compare to appraiser's projected sales of 100 lots per year.)

THE APPRAISAL

Any appraisal of real estate is subjective. In my opinion, the appraiser is absolutely correct in his technique of evaluating this development property. The use of so-called "comparables" (recent arms-length sales of comparable properties) is the most reliable and generally accepted method of determining market value.

My analysis of several hundred similar appraisals for the S.E.C. has demonstrated that they are generally overly optimistic, however. (The S.E.C. specifically prohibits the use of such appraisals in registration statement and reports.)

BEST CASE ANALYSIS - Professional fees are excluded

The appraiser's estimate results in a loss to the Trust of approx. \$460,000. (See Exhibit 1-Best Case) That loss is based upon the following assumptions (incorporated into the appraiser's estimated value)

- (1) Sale of 100 lots per year (Total 1000 lots)
- (2) Sales price per lot of \$12,500 adjusted by 3% price index, less \$5,000 lien per property.
- (3) Start up costs of \$500,000
- (4) Lincoln City approval of annexation of property
- (5) Lincoln City approval of \$5.2 million bond and sale of bond within 6 months
- (6) Immediate clearance of title to property.
- (7) Sale of lots for 100% cash.
- (8) Discounted Cash flow at 15%.

MORE LIKELY CASE - Professional fees are excluded

As suggested above these "best case" assumptions may be unrealistic. The more likely projection (Exhibit 2) reflects the following analysis of these assumptions.

ASSUMPTIONS #1

Sale of 100 lots per year - this assumption is optimistic considering:

- (a) Lincoln City population has increased at a rate of only ten persons per year over the last eight years.
- (b) the County population for the same period has increased approx. 300 persons per year.
- (c) the appraisal reveals very few actual lot sales over the last few years (a handful in areas similar to subject property)

This does not support the "boom town" projections in the report. Adjust more likely case to 75 lots per year.

ASSUMPTION #2

Sale price of \$12,500 per lot (less \$5,000 improvement Lien) is not supported by the "comparables" in the appraisal. The only relevant comparables are:

- (1) North 36st sales (p. 18 of appraisal report)
3 lots @ \$5,000/lot in June, 1977
- (2) Roads End lots (p. 19-20 of appraisal report)
9 lots @ average of \$9,000/lot during 1977

According to the appraisal report, the Roads End lots are improved. Several are significantly larger than average and the lots "are considered superior" to the existing subject property lots (that is, Sal-La-Sea) because of their location within the existing development and proximity and view to the coastline and beach (at p. 20).

This is the point where the appraiser's conclusions are unsupported by the analysis. He states that properties which are selling at \$9,000 per lot are superior to those at Seaview Village and yet concludes on page 26 that the Seaview lots will be worth \$12,500. A \$9,000 figure is more than generous. An \$8,000 figure would be more realistic (reflecting the appraiser's view that Seaview lots are inferior to the \$9,000 Roads End lots).

\$5,000 may be too high as well, but I have used a very optimistic \$9,000 value in the "more likely" projection.

ASSUMPTION #3

In the absence of additional data start up costs of \$500,000 appear appropriate.

ASSUMPTION #4 and #5

Immediate approval of Lincoln City annexation and subsequent approval and sale of a \$5.2 million bond issue are unlikely to occur overnight. An additional year at least would not seem unreasonable. The appraisal report at p. 15 states that:

"it should be noted that the economic feasibility of such development is tenuous in light of numerous governmental approvals required to execute the Sal-La-Sea project. Extensive delay or the inability to gain any one of the necessary governmental approvals, would, in my opinion, render the land undevelopable. This condition would have an extremely negative impact on the marketing potential of the property".

However, a negative adjustment to reflect this delay has not been made.

ASSUMPTION #6 - Clear Title

The cost to clear title (45 exceptions revealed during title search) should exceed \$1,250,000 and could take substantially longer than projected in best case analysis. Further adjustment has not been made, however.

ASSUMPTION #7 - Sale for 100% cash

Land sales in general and sales in this area in particular are financed by the seller. The best case analysis reflect sales for 100% cash. This is totally unrealistic. 20% cash and the balance over ten years would be a more realistic assumption. This would decrease DCF figure significantly. However, further adjustment has not been made.

ASSUMPTION #8 - Discounted Cash flow at 15% rate.

DCF of 20 - 25% would be more appropriate. This would result in a lower DCF number. However, the appraiser's selection of 15% has been retained.

WORST CASE ANALYSIS

Exhibit 3 reflects the Trust's total exposure to loss assuming worst case.

GENERALComment upon the Bank's decision to "work out" the Seaview Village property

Although there is no evidence to support this assertion, it should be noted that banks generally are biased in favor of work outs and away from write offs. So called "work outs" permit banks to carry properties at a much greater value for accounting purposes than would result from immediate write offs, thereby avoiding any appearance of financial difficulties. REITs and Banks used this ploy during the last real estate recession (1972-1974) (Documented by Federal Reserve Board/S.E.C. memoranda during this period).

EXHIBIT 3: SEAVIEW VILLAGE-WORST CASE PROJECTION

This represents the total exposure to loss by the pension trust assuming the inability to market the Seaview Village Properties or a general recession after the installation of all improvements to the property.

\$1,250,000	To clear title and prepare map
500,000	Start up costs
5,200,000	Bond Liability
400,000	Bond expense (first year's interest)
<u>\$7,350,000</u>	Total out of pocket expense plus liens on property

MEMORANDUM OF JANUARY STAFF MEETING - ANALYSIS OF GARDNERVILLE
WORK-OUT

During the first week of January the financial analysis of the Gardnerville work-out was presented to the staff. In summary, it was concluded that the Pension Trust was placing approximately \$8 million additional dollars at risk in order to resolve potential contingent liabilities of \$4-\$5 million and hopefully turn a profit. A December 27, 1978, meeting with Bank Counsel indicated that the bank is convinced that a "work-out" is the only way to proceed on this property, although counsel at no time presented data or projections indicating that a work out was the best solution. A work out appears to be a reasonable decision only if we accept the assumptions with which the bank apparently began its analysis:

1. The Pension Trust has contingent liabilities of approximately \$4-\$5 million.
2. Defenses (including fraud) to such contingent liabilities should not be pursued.
3. Amounts owed to the Pension Trust by Shenker and others should not be pursued.
4. The Heck deal is viable, will yield profits to the trust, and is the only method of eliminating the contingent liabilities of \$4-\$5 million.

If we are unable to challenge the reasonableness of the first 3 assumptions, however, (which involve legal, not investment, decisions) then the Heck deal should be pursued unless expected losses exceed \$5 million (estimated maximum contingent liabilities).

I am unable to prove that the Heck deal will yield losses of that magnitude. I do know that the Trust will incur additional liabilities (personally or indirectly) of \$8-10 million dollars. In the event this development cannot be sold because of local or national economic conditions, e.g., tight money, then the trust will have that amount exposed to possible loss.

The analysis of the Gardnerville work-out is presented in its simplest form as follows (ball park figures - more precise analysis is not warranted because of nature of raw data):

1. Gross revenue based on Heck deal
200 lots @ \$12,000/lot or \$2.4 million first year
(increased slightly in subsequent years)

2. Expenses - Annual

GRID Interest	\$330,000
Interest on Heck Loan	432,000
Interest on V.B. Loan	192,000
Professional fees + R.E. Taxes	300,000
(Pro Rata allocation of advisory fees and attorney's fees*)	

\$1,254,000.00

3. Liabilities

GRID Bond	\$5.5 million
Heck Loan	\$3.6 million
V.B. Loan	\$1.6 million

\$10.7 million + additional sums to complete improvements & interest

4. Annual Principal for Heck loans (\$3.6 million + V.B. Loan \$1.6 million over 5 years) \$1.3 million
- Annual GRID Bond Principal \$0.7 million

\$2.0 million annual principal payment

First year cash flow is negative:

\$2.4 million minus \$3.25 million principal, interest + fees* = \$1.25 million deficit

*First year fees exceeded \$1 million and counsel gave no assurances that fees would decrease.

Cash flow improves over 5 year term of project (assuming bank projections) due to decreasing interest charges so that total deficit approximates \$2-2.5 million (if project develops as expected - total exposure if project fails is still \$8-10 million, i.e., principal and interest on loans plus professional fees minus value of property partially improved.)

BEST GUESS SUMMARY ON CONTINGENT LIABILITIES

\$1.1 million guarantee of Argonaut bond
 \$1.6 million claimed guarantee of V.B. loan to Sierra
 \$1.5 million in land contracts which could be lost

\$4.2 million-total

SUMMARY OF HECK DEAL

Pension Trust acquired units 6 & 7, 8 & 9 of Gardnerville. Shenker and Co. owe Pension Trust \$32 million + interest. Therefore, trust is losing \$3.2 million per annum in interest alone (10% on risk free government notes). The major components of the Shenker-Heck deal are:

1. Reduce Shenker liabilities to P.T. by use of credit against those liabilities depending upon amount realized by P.T. from land sales.
2. But no outright release of Shenker from any liabilities.
3. \$3.6 million loan from Valley Bank for Heck developments 12% for 5 years secured by 1st deed of trust on units 6 & 7. Interest guaranteed by Pension Trust.
4. \$3 million for offsite improvement. \$600,000 for delinquent assessments on GRID bonds.

M. PAUL HECK

1. Heck has filed for bankruptcy at least twice.
2. Three prior deals went sour
 - (a) parking garage collapsed
 - (b) housing development went bust
 - (c) Condo development went bust
3. Plumas Eureka Estates-a so called "successful" development is no Reston or Columbia. (Few homes actually built, no recent sales).
4. Heck does not have construction financing as he indicated he would.

Counsel for Pension Trust has added certain safeguards to the Heck deal which were absent before the DOL raised questions concerning Heck and which make the transaction somewhat more palatable:

1. All rights under contract may be reassigned immediately to new developer if Heck drops out or fails to perform.

2. An independent consultant will inspect all work to assure compliance with all agreements, applicable building codes, etc.
3. Heck will have no authority to handle or disburse funds.
4. Completion of improvements will be bonded by reputable insurance company (Fireman's Fund) rather than affiliate (A. gonaut Insurance).
5. Lot takedown limit will be imposed.
6. Heck will enter into no transaction with affiliates.
7. "Reputable" local builder will perform actual work (Eagle Valley Construction Co.).

SOUTHERN NEVADA CULINARY WORKERS & BARTENDERS PENSION TRUST

INDEX OF MATERIALS*

- A. Upper Avenue Bank Proposed Asset Management Plan and Amendment to Proposed Asset Management Plan
- B. Investment Manager's monthly report for April 1978
- C. Investment Manager's monthly report for May 1978
- D. Investment Manager's monthly report for June 1978
- E. Investment Manager's monthly report for July 1978
- F. Investment Manager's monthly report for August 1978
- G. Culinary Workers Pension Trust Financial Statements
- H. Coldwell Banker appraisal of Sal-La-Sea Property dated 2/16/78
- IJ. Coldwell Banker appraisal of Gardnerville Property dated 2/14/78
- K. Coldwell Banker appraisal of Murrieta-Hot Springs Property dated 2/15/78
- L. Title searches of various Pension Trusts and related properties
- M. Sam Clark's inspection of Murrieta-Hot Springs
- N. Sierra Charter Corporation and Affiliates
Various financial statements and other data
- O. Information concerning selection of a successor investment advisor
- PQ. M. Paul Heck financial statements and other information
- R. Solicitor's Office interrogatories
- S. Proposed Valley Bank of Nevada Note for Gardnerville
- T. Reports and other information submitted pursuant to exemption

*These materials are on loan from the Division of Enforcement

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210

JAN 15 1979



MEMORANDUM TO: IAN D. LANOFF
Administrator, PWBP

FROM: *RVE* Robert Eccles
jm Ken Marshall

SUBJECT: Culinary Workers Meeting

On December 27, 1978, we met in Chicago for about three hours with attorneys for the Upper Avenue Bank (Bank), present investment manager of the Culinary Workers plan, and with an attorney for Thomas Karsten and Associates (Karsten), the successor investment manager. The Bank has tentatively decided to close the plan's proposed transaction with Paul Heck for development of the Gardnerville properties and will make a final decision in the first week of January. Closing is anticipated for January 12, 1979.

The major topic of discussion was Heck's suitability as developer. Since learning of Heck's bankruptcies, the Bank had 1) looked into the bankruptcy records and searched court records for other litigation involving Heck; 2) gone back to Heck's original references, Crocker Bank (which is financing Heck's development at Plumas Eureka), and Birr-Wilson (a municipal bond underwriter), both of whom continue to speak highly of Heck; and 3) talked with the attorney for Heck's former partner in Plumas Eureka who basically said that the breakup of that partnership was not due to inherent problems with either Heck or the development. The investigation into the bankruptcies showed that Heck's personal bankruptcy had been triggered by the bankruptcy of the construction company in which he was a principal (MacDonald, Nelson, and Heck (MNH)) which was itself

triggered by the physical collapse of a parking garage built by MNH. The Bank's investigation had focused on three areas:

- 1) Allegations were made by investors in MNH's projects that they had been defrauded into becoming investors; the basic claim against Heck is that he provided excessively favorable financial information about MNH which was then provided to the potential investors by the project promoter. One suit has gone to judgment favorable to Heck. One suit is still unresolved, but Heck has defaulted.
- 2) The unresolved suit and a small amount of other personal litigation present some potential of future liabilities against Heck, although the Bank believes that the major liability has already been discharged through Heck's personal bankruptcy.
- 3) There is no good answer to the question of why Heck did not disclose the bankruptcies to the Bank. Heck explains, weakly, that he was not asked any direct questions about the bankruptcies and that they did not reflect on his basis competence as a developer. Crocker Bank says that it financed Heck at Plumas Eureka with knowledge of the bankruptcies and has been very satisfied with his work.

The facts as to the bankruptcies are inconclusive. However, the Bank's attorneys argue persuasively that the bankruptcies are unfortunate but of minimal importance to the Gardnerville workout, for the following reasons: First, they say that Heck is not a brilliant financial manager but that he has a good reputation as someone able to put together the pieces of a development, as he has done at Plumas Eureka. Second, the plan will be insulated both from action by any of Heck's creditors (if any liabilities should develop) and from financial mismanagement by Heck by the fact that the construction money will not be disbursed through Heck and that payments will instead be made by Valley Bank directly to the contractor (Eagle Valley Construction Company which has done business in Carson City for ten years). Thus Heck will be, from a financial standpoint, virtually an employee of the plan, receiving his share of the disbursements but having no control over the remainder. Third, since receiving your letter concerning the

bankruptcies, the Bank has negotiated additional safeguards for the plan. The most important of these is that the plan will hire its own consultant to certify that construction has been completed in accordance with plans and codes before any money is disbursed; this will be in addition to the same type of supervision being provided by Valley Bank as the construction lender. In addition, Heck will certify that he has no undisclosed interest in the development, the number of lots which Heck can take down at one time will be limited, and Heck will assign to the plan all his interest in the applicable contracts so that a successor developer could take over his position if necessary.

We also discussed generally whether a workout was the option most favorable to the plan as compared to the possibility of getting out of the development entirely. The Bank has determined that a workout is the only way for the plan to avoid substantial litigation from current lot owners at Gardnerville who were promised site improvements. In addition to these possible liabilities which the bank views as real threats, the plan is also directly liable to Valley Bank on a guarantee of a \$1.6 million letter of credit which would certainly be called if development were abandoned. A workout also gives the plan time to deal with the other creditors of Sierra Charter who claim, not totally without foundation, that the plan assumed Sierra Charter's liabilities when it took control over that company's management. A second advantage of a workout, from the Bank's view, is that installation of site improvements would preserve the value of the lot paper held by the plan and would enhance the value of the plan's remaining undeveloped land. Finally, development now will allow the plan to keep the benefits of the present zoning. The Bank is convinced after talking to local brokers, lenders, and officials that the development will sell and that it will have a competitive edge in Douglas County if it goes forward now. Approximately six months are required to provide utilities to the site, and the projected schedule is to have the first houses ready by the time that the utilities are available.

Assuming that a workout is a good idea, the Bank believes that it has negotiated a good deal for the plan with limited new exposure. The funding for the workout will come first from whatever funds remain unused from the GRID bonds (estimated at between

\$200,000 and \$700,000); second from the new \$3 million loan from Valley Bank; and third from Heck and the plan equally, as required. The Bank concedes that Heck may not have the money necessary for this third step but believes that other developers would not be willing to commit to any such investment so that the plan is no worse off even if Heck is without funds. In addition, the money will be required only if cost overruns develop which, if at all, will likely be after substantial site improvements have been completed. The Bank's attorneys were at great pains to emphasize that the completion of the improvements was crucial and that they believed Heck could do that job. They do not anticipate difficulty attracting other homebuilders, should Heck become insolvent after the site improvements are completed since they have already received inquiries from a number of other builders.

The Bank believes that the plan is "over the hump" in the amount of outside attorneys fees which will be required, although substantial fees will be incurred over the near term in connection with Murrieta and the New Mexico properties. Once the assets are "tranquil", the question of Shenker's liabilities to the plan will have to be resolved; currently an "uneasy truce" is being maintained in order to obtain Shenker's cooperation in working out the assets, but the plan's ultimate rights to proceed against Shenker are not being affected. Karsten has been in the process of familiarizing himself with the plan's collateral, and his attorney foresaw no problems in carrying through with the Heck transaction which is likely to have closed before Karsten is substituted as investment manager; the only substantive information provided by Karsten's attorney was that Karsten had joined with a Bank attorney in an unsuccessful attempt to interest another potential developer in the Gardnerville project and that Karsten had met with Heck, "liked" him, and thought he could get along with him.

The CHAIRMAN. In this same memo that I was referring to with Mr. Stern, Mr. Stern came to the conclusion that, "A studied examination of the obscure details of the report gives the impression that the transactions may generate income, but the bottom line will show millions of dollars of losses." Of course this is an extremely serious prospect that Mr. Stern raised. Did you do anything about that?

Mr. LANOFF. That is the reason that I sent the Marshall draft—the second Marshall memo you might call it—to Mr. Lebowitz for his office to analyze. I was concerned both about Mr. Marshall's conclusions with respect to alleged reporting failures on the part of the investment manager, and I was concerned about Mr. Marshall's conclusions about alleged imprudence on the part of the investment manager.

I would like to add that backing all this was my belief in connection with the investment manager that, since an investment manager had been appointed, the investment manager was the fiduciary that was making decisions in behalf of the plan. It was not the Labor Department's role to serve as the fiduciary in this particular matter.

It also was in the back of my mind that, because the bank was serving as a fiduciary and because the bank had what lawyers commonly refer to as "deep pockets," in the event that there was something here that we were not aware of, or if it did turn out that some imprudent actions had been taken by the investment manager, the Department could always move against that investment manager at the appropriate time.

We were very careful to check out the investment manager and Mr. Heck with other Federal agencies, including the FBI. I have memos in the file which reflect that I asked Mr. Kane and Mr. Daly to check out Mr. Heck, and that they reported to me that there was no record of any sort that he was connected in any way with criminal elements.

The CHAIRMAN. Did you check out his business background as well?

Mr. LANOFF. Yes. As a matter of fact, I asked Mr. Kane to interview Mr. Heck, and he did so. I have a memo from Mr. Kane where he reports on that interview. I understand Mr. Kane yesterday stated that if he had been asked to interview Mr. Heck in time, then perhaps what he found could have been used to hold up the Heck transaction.

As a matter of fact, he did conduct his interview of Mr. Heck in August, and it was in October, as I have testified, that we told Mr. Hoffman that, based on some of the things that we discovered ourselves, the UAB could not proceed with the transaction with Mr. Heck.

So we held up the Heck transaction actually from July 5, 1978, in a letter to Mr. Hoffman from me, where we said we had to take a further look at this, until January 1979, when, based on the Marshall/Eccles memo and other considerations, I decided that there was insufficient evidence to go to court—I also listened to my lawyer's advice on this—to convince a judge who had appointed an investment manager that the investment manager should be stopped from carrying out its plan.

The CHAIRMAN. We will put all of these documents into the record.

Another document, that I think we have already put in the record, but will put in at this point also, is an April 4, 1978, memorandum from Monica Gallagher to you, Mr. Lanoff.

[The material referred to follows:]

U.S. DEPARTMENT OF LABOR
Pension and Welfare Benefit Programs
Washington, D.C. 20216



JUL 5 1978

Martin R. Hoffmann
Gardner, Carton & Douglas
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: Southern Nevada Culinary and
Bartenders Pension Trust - Gardnerville
Ranchos Units 6 and 7

Dear Mr. Hoffmann:

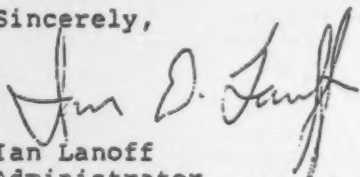
I am writing in response to your letter of June 29, 1978 wherein you outlined a transaction under consideration by the Upper Avenue Bank as Investment Manager for the Southern Nevada Culinary and Bartenders Pension Trust involving the Gardnerville property and proposed to be consummated by July 6, 1978.

I appreciate your informing the Department of this proposal. As I believe our attorneys have advised you, because of the significance of the Gardnerville work-out to the Pension Trust, I intend that the Department review this matter in greater detail. In connection with such review, I would expect that Department personnel will need to meet with you or Bank officials at some point to review the final documentation on this matter, the credentials of the developer, Paul Heck, and the safeguards provided with respect to disbursement of the proceeds of the Valley Bank loan. It is not entirely clear to us at this time how the Investment Manager intends to protect the Pension Trust's defenses on the alleged guarantee of \$2.6 million ✓

in Sierra obligations to the Valley Bank, especially in view of paragraph 10 of the Valley Bank letter of June 22, 1978. Further communication by my attorneys with you on this particular matter, and doubtless other matters which will surface in our review of the transaction, will be necessary in order that we may properly evaluate the transaction in light of our enforcement responsibilities under ERISA.

I look forward to your continuing cooperation with Department personnel in their review.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ian D. Lanoff". The signature is fluid and cursive, with a large, stylized initial "I" and a long, sweeping underline.

Ian Lanoff
Administrator
Pension and Welfare Benefit
Programs

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210



APR 4 1978

MEMORANDUM FOR: IAN LANOFF

FROM: MONICA GALLAGHER: *mgbygb*

SUBJECT: Marshall v. Schmoutey et al., D.Nev.,
Civil No. CV-LV-77-47, RDF
Southern Nevada Culinary Workers
and Bartenders Pension Trust
Case No. 72-6118 *151712*

Attached for your information are copies of the Amendments to the Proposed Asset Management Plan, and a Stipulation between the Department and present trustees of the Southern Nevada Culinary Workers and Bartenders Pension Trust, which documents were filed with the Court on March 28, 1978. These documents were drafted by attorneys representing the Investment Manager, the trustees, and the Department at a meeting held in Chicago on March 27, 1978. We are hopeful that, in accordance with our several conversations, these Amendments adequately protect the Department's interest in being able to pursue the Investment Manager should it violate ERISA's fiduciary responsibility provisions in implementing the Plan. In addition, the Stipulation reserves the right for the Department to petition the Court by April 7, 1978 to impose a 5-day notice requirement on the Investment Manager. We are preparing such a petition.

Also attached is a copy of a letter which the trustees have already signed, and which we intend to sign, which proposes that we meet with the Investment Manager to discuss, inter alia, procedures for a possible transition to a new investment manager should the Upper Avenue Bank ask to be replaced. This letter was also drafted at the meeting of March 27. I would like to meet to discuss with you the time, place and proposed attendance for such meeting.

Finally, I have also attached a copy of a March 28, 1978 memorandum to Ed Daly from Tom Kane which shows a distribution to the San Francisco and Kansas City Regional Offices and the Los Angeles and Dallas Area Offices. In the third paragraph it states that Allen Marrinson of the Upper Avenue Bank reported to compliance officer Sam Clark that he was talking to Monica Gallagher among others on March 2, 1978 at 5:00 pm. Please be advised that I did not speak to Marrinson as indicated. It would have been easy enough, I believe, for Mr. Kane to have determined whether I participated in any such call, and I am unaware of any useful purpose being served by the recitation in his memorandum of the unverified assertions of Marrinson. I am aware that Martin Hoffman and Rick Menon, attorneys for the Bank, were speaking to Don Myers and Judy Burghardt of this office from Hoffman's Chicago office at about that time. Marrinson may have been present in the office while that conference call was going on; if so, neither of my attorneys was so advised.

Inasmuch as verification of the participation by attorneys of this office in telephone calls or actual or proposed meetings among lawyers may be easily enough obtained from us, I suggest that, to the extent information of such a nature is deemed pertinent, verification should be attempted prior to preparation of reports of the type attached.

Attachments

cc: Ed Daly
Tom Kane ✓
San Francisco RO
Los Angeles AO
Kansas City RO
Dallas AO

The CHAIRMAN. In the first paragraph it says,

We are hopeful that, in accordance with our several conversations, these amendments adequately protect the Department's interest in being able to pursue the investment manager should it violate ERISA's fiduciary responsibility provisions in implementing the plan.

So the issue had been raised in that particular memorandum.

Mr. LANOFF. I would like to add that there was some discussion this morning about the Labor Department's concern with making sure that people who were involved in all of this did not have relations to the criminal element or organized crime.

While we learned from the other agencies that neither Mr. Heck nor other people involved in these particular transactions had any such ties, I believe I recall in the course of checking of some other people we learned that there was a possibility that one person did, and that was a Mr. Marrinson.

You might be aware, Mr. Chairman, that it was proposed that Mr. Marrinson replace the investment manager, UAB, when the UAB wanted to resign, and that I denied Mr. Marrinson the opportunity to serve as investment manager for the plan.

The CHAIRMAN. Who made that proposition?

Mr. LANOFF. As I can best recall, it was a joint effort. I believe the UAB supported him, but I also recall that he went himself to the trustees. I do not recall whether there was a separate relationship with them.

The CHAIRMAN. Possibly a UAB and trustees recommendation?

Mr. LANOFF. I was concerned about what I had heard, and I was also concerned about some other activities that I had learned about that Mr. Marrinson engaged in, and for that reason I rejected him as investment manager.

The CHAIRMAN. Mr. Marrinson served for several months as one of the investment managers.

Mr. LANOFF. I believe he worked for the UAB.

The CHAIRMAN. He was a key figure.

Mr. LANOFF. But as far as I know, when he was originally checked and the UAB was checked out by Mr. Kane, nothing showed up. It was only during the time that we were talking to the UAB about its resigning and we were insisting that it could not resign without finding an adequate replacement that I believe Mr. Kane learned that there was some question about Mr. Marrinson.

The CHAIRMAN. Nonetheless, Stern was highly prophetic in his recommendations, when you consider the latest investment manager's estimate that the properties are worth less than \$11 million and that the fund faces losses of some \$34 million.

In this same memo we have been referring to, Mr. Stern stated that so many people at Labor had worked on the *Culinary* case that it was unclear who was responsible for assessing whether or not the bank had satisfied its reporting requirement.

Stern said this responsibility should rest on someone, and that a "high priority" should be assigned to an analysis of the bank's compliance with the reporting requirement. What was your disposition of these recommendations?

Mr. LANOFF. I agreed with that, because this was just the kind of thing that I could rely on Ed Stern to help me on. That is why I sent Mr. Marshall's second memo or draft to the exemptions

people, who were responsible for monitoring the exemption that had been granted to the UAB, to get their opinion on whether the UAB had been acting in accordance with the reporting requirements in the exemption. Mr. Lebowitz' response was that they did meet the requirements of the exemption.

The CHAIRMAN. I see.

On April 12, 1979, the final Ken Marshall report was distributed. The report raised all kinds of red flags against the programs being carried out by the fund's investment manager. Do you recall reading that Marshall report, Mr. Lanoff?

Mr. LANOFF. Yes, I did. I also recall sending it to Mr. Ballard, my deputy, to read, and also recall sending it to Mr. Lebowitz for an evaluation.

The CHAIRMAN. Do you recall an April 18, 1979, phone conversation with Ed Stern in which Stern told you that you would find in the Marshall report, "a persuasive argument that the bank had grievously mishandled the trust assets"?

Mr. LANOFF. I did not recall the conversation until I read Mr. Stern's description of it in the papers that were distributed by the committee.

The CHAIRMAN. Be that as it may, Mr. Lanoff, the Marshall report is, of course, very crucial.

Mr. LANOFF. I do not want to downplay the seriousness with which I responded to Mr. Stern. As I said, I referred all that Mr. Stern was doing and all that he was telling me to other officials for their review and action.

The CHAIRMAN. I see. As I look at it, the Marshall report is a crucial and compelling document.

Mr. LANOFF. Right, but I was convinced by Mr. Lebowitz' analysis—first of all, let me say that, as Mr. Marshall recognized himself, it was already moot because, based on his earlier memo, I had given the green light to the UAB to proceed with the Heck transaction.

By the time I received this memo, the only possibility, I guess, that I had was to actually bring a lawsuit to stop what had already been approved.

I sent it to Mr. Lebowitz, and Mr. Lebowitz, for whom I have a tremendous amount of respect—he does have a background in the fiduciary area; he does understand real estate transactions—his conclusion was that, as with many of these real-estate-type transactions, it was too early to judge whether the UAB had acted in an imprudent way and whether there would be severe losses to the plan.

I have not seen the latest review of these investments by the Karsten investment management company. The latest report I seen have said that, at least as of September 1979, more than 6 months after the go-ahead was given, the construction was proceeding on schedule.

One of the arguments that Mr. Marshall cited in his memo in relating what the bank had argued in favor of its proceeding was that, even if Mr. Heck was only able to build the offsite improvements, this might result in other developers being interested in finishing up the project. So it was not that crucial, at least in the

bank's view, that Mr. Heck actually complete the project or the transaction as entered into.

It is possible that Mr. Heck did fulfill at least what the bank was saying they wanted him to, and that was to complete the construction of the off-site improvements.

As far as the Oregon property is concerned, I have no idea as of this date whether the Karsten people feel that that was a worthwhile transaction for the investment manager to engage in. I think it is something that is worth raising with the Karsten people to find out.

There was a typo or two in the second Marshall memo. I am not the greatest mathematician, but I believe he came up with an analysis that the growth in the town was going to be something like 10 people a year. That must be wrong; I cannot believe that is right. Perhaps someone could check that out to see whether that was a typographical error.

The CHAIRMAN. The January 13 Marshall memo, staff tells me, is not a recommendation. It gave you a green light. It appears only to quote bank officials—

Mr. LANOFF. That is what I said, Mr. Chairman.

The CHAIRMAN. Whom you later dismissed—

Mr. LANOFF. Certainly to me the implication of the memo was that Mr. Marshall was now satisfied with the report of the bank. He signed off on a memo which listed all of their arguments in favor of proceeding both with Mr. Heck and with the transaction. To me, clearly the implication was that he was satisfied.

If he were not satisfied, I would assume, and I certainly would have assumed, that he would have written a memo to me that would have objected to our proceeding and would have come to me or sent Mr. Stern to me. None of that happened.

The CHAIRMAN. Of course that is what he did later.

Mr. LANOFF. After the fact, as he also admits; he says it is moot in April.

The CHAIRMAN. Let us look at some of the Marshall report conclusions. He states, for instance, that the investment manager's reliance upon Shenker's oral representation to provide more collateral, reinstate guarantees, et cetera, seems, "naive and unwarranted by previous experience with Shenker." If you had read that—

Mr. LANOFF. No, I read that. As the investment manager explained it in letters that are in my file, the reason for that was that they took a global view of the handling of these real estate assets.

While it is true that it could have done what, for example, Mr. Kane suggested and gone after Mr. Shenker with respect to certain of the properties, as I understood its approach, it believed that it needed his cooperation in order to get the most it could get out of all of the properties.

It felt that going for him on his personal guarantees with respect to, say, Murrieta Hot Springs for \$7 million might have messed up its plans for gaining a great deal of money back for the plan from the Gardnerville and Sal-La-Sea and perhaps some of the other pieces of property that had been given as security for the loans by Mr. Shenker.

The CHAIRMAN. Marshall's report says that, "Shenker's promises have not been fulfilled. In fact, it appears that not \$1 nor additional collateral has been received from Shenker."

Mr. LANOFF. I guess that is what has happened. As I heard this morning, Mr. Karsten has moved against Mr. Shenker on the personal guarantees. That was always something that I realized was a possibility for either the investment managers or for the Labor Department to do.

When the Department decided to go ahead and not object to the workout that was developed by the UAB, it was always understood that the Department would not agree to that unless all of the rights of the plan and the Department were preserved against Mr. Shenker, and that was part of the deal, and it worked out that way.

Perhaps Mr. Karsten will today be able to move against Mr. Shenker on those guarantees and collect that money for the plan, and that would be fine.

The CHAIRMAN. Why did you not give us this January 13 Marshall memorandum prior to now? Marshall did not even consider it a contradictory recommendation, because we had asked for all of his recommendations. He did not consider it contradictory.

Mr. LANOFF. Mr. Chairman, you asked me why I did not give it to you?

The CHAIRMAN. Yes.

Mr. LANOFF. I was not asked to give anything to the committee. I was called the day before I was interviewed by Mr. Gill. Mr. Gill said he wanted to talk to me. I said, "Fine. Come tomorrow." I did not have any idea what Mr. Gill wanted to talk to me about.

The CHAIRMAN. Did he not discuss these matters in general and ask for all documents pertaining to this?

Mr. LANOFF. Not to me, Mr. Chairman, not that I recall. As a matter of fact, let me say that, at the time that I was interviewed, I had not even looked in my own files to see whether I had any files in the *Culinary Workers* case. It was only after I was interviewed that I did.

The CHAIRMAN. OK. The Marshall report says that,

Certain practices or conduct of the investment manager appear to be contrary to the best interests of the pension trust and inconsistent with the prudent guidelines of the asset management plan and ERISA prudent standards in general. In fact, the transactions appear more certain to benefit Shenker and affiliates than anyone else.

Do you agree with that conclusion, Mr. Lanoff?

Mr. LANOFF. No, I do not, and I really do not understand the basis for his saying that. As I say, the workouts were recommended by the investment manager as a way of helping the plan. Certain transactions were entered into with Mr. Shenker, but all of the rights of the plan against Mr. Shenker were preserved.

The CHAIRMAN. Mr. Gill informs me that when he asked you for the documents you did not even know of the Marshall report—you did not even know there was a Marshall report.

Mr. LANOFF. That is right. I had not looked at any of this or thought about this in 4 years, Mr. Chairman. Most of this took place in March 1978.

The CHAIRMAN. I see.

Mr. Lanoff, the report shows that Shenker's liabilities to the trust and to third parties were being reduced substantially by further investment of pension fund money. The trust assumed liability for debts of \$1.2 million the Sal-La-Sea project and some \$10.7 million on Gardnerville. That is true, is it not?

Mr. LANOFF. As I understand it, the investments were aimed at returning money to the plan. To the extent that the plan received money from these transactions, of course that would result in Mr. Shenker owing less to the plan.

The CHAIRMAN. Mr. Lanoff, the investment managers have already spent more than \$13 million in developing these properties for sale. The current investment manager estimates their net worth at less than \$11 million. He must not expect the \$13 million already spent to be recouped on a sale of the properties, because he is predicting a \$30 million loss to the fund unless there is a substantial settlement in the Shenker lawsuit.

In my opinion, spending \$13 million was an astounding example of throwing good money after bad. Why did you allow that to go on?

Mr. LANOFF. Let me first say that everyone who has been involved in this case, including Mr. Kane and including Karsten, has agreed that the workout approach was a preferable approach to the other two approaches, the other two being just permitting the loans to run or moving quickly against Mr. Shenker.

I have a March 13, 1978, memo from Mr. Kane to Mr. Daly, where Mr. Kane writes, "I agree with the alternative selected by the UAB. This would appear to be in the best interest of all parties, especially the pension trust."

So from the very beginning, Mr. Kane as well as everyone else who has looked at this has agreed that the workout was the preferable approach of the options available to the plan at the time we considered all of this.

Naturally, it is to be expected that there are going to be some costs incurred in following the workout approach as opposed to some of the other approaches.

I do not know what my opinion is—I really have not thought about it—with respect to the fees that have been charged to the plan by the investment managers in this particular case. I do not know, in light of the work that has been done or what has been accomplished, whether those are reasonable fees or not.

The CHAIRMAN. It looks pretty bad under the circumstances.

Mr. LANOFF. It seems high to me, thinking about it, but I must say that I had Mr. Kane working on a project for 2 years to try to come up with the definition of an "unreasonable fee," and finally he just threw up his hands and I just threw up my hands in frustration because of the difficulty in deciding what is an unreasonable fee. I think it is something that the Labor Department should look at, and I think if the Labor Department concludes that the fees charged are unreasonable under the circumstances, it ought to move against the investment managers for recovery of all or part of the fees.

The CHAIRMAN. One of the things that bothers me about your testimony is that you have indicated you did not realize about the final Marshall conclusions, but yet you accepted the Fite report.

Mr. LANOFF. The Lebowitz report, Mr. Chairman.

The CHAIRMAN. The Lebowitz report prepared by Ms. Fite.

Mr. LANOFF. There is a difference. Mr. Lebowitz is in charge of the office, and he reached the conclusions reported in the memo.

The CHAIRMAN. You accepted it because he made them.

Mr. LANOFF. When you run a big program, you have to rely on somebody.

The CHAIRMAN. What I am saying is that, in the report prepared by Ms. Fite, she refers to the Marshall report.

Mr. LANOFF. I frankly do not even recall whether I knew that Ms. Fite prepared it.

The CHAIRMAN. That is what you originally said.

Mr. LANOFF. Mr. Gill, when he interviewed me, kept referring to the Fite report, and I must say that I recall telling him, "I don't know what you are talking about."

The CHAIRMAN. Of course the memorandum is to you. It is a July 2, 1979, memorandum from Alan D. Lebowitz, and Ms. Fite's name, of course, is on it.

Mr. LANOFF. I notice that—as receiving a copy.

The CHAIRMAN. I see, but you had forgotten about it, or you had not read it.

Mr. LANOFF. I would not call it the Fite report, because her name was on the bottom as being sent a copy.

The CHAIRMAN. I only call it that for identification purposes, because she prepared it.

Mr. LANOFF. Also I would like to say in defense of Ms. Fite—

The CHAIRMAN. I am not finding fault with Ms. Fite, except—

Mr. LANOFF. I think she has been slandered today by Mr. Stern, who has raised questions about her ability.

The CHAIRMAN. No, I do not think she has been slandered. I think there is a real issue here whether Mr. Marshall is right. In retrospect, I have got to say Mr. Marshall was right.

Mr. LANOFF. I agree—

The CHAIRMAN. I think people can write reports that they make mistakes on. But I think Mr. Stern is right that there was not any analysis put into this, and somebody asked her to write it, and she wrote it. I would like to know who that was. Was that you? Was that Mr. Lebowitz, or who?

Mr. LANOFF. I recall referring it to Mr. Ballard and asking him to refer it to Mr. Lebowitz.

The CHAIRMAN. So it was not you, is what you are saying?

Mr. LANOFF. I do not recall referring it to her.

The CHAIRMAN. It looks like a whitewash, you see.

Mr. LANOFF. I do not agree.

The CHAIRMAN. If you have a report from a former SEC expert with lots of experience in this area outlining exactly what was going to happen to the funds, and then it happens, I would have to say that I do not think Ms. Fite was slandered. I do think she has been criticized, and even in that context it was indicated that maybe she was asked to do a job here.

Mr. LANOFF. I respectfully disagree. I do not consider it a whitewash. I consider it a thoughtful analysis of the issues, and I think anyone who has read the prudence regulation that the Department issued in May 1978, would agree that it follows the analy-

sis that is contained in the prudence regulation issued by the Department. That is just the kind of analysis that one would make under the prudence regulation of a particular course of investment.

The CHAIRMAN. Maybe we had better challenge those standards too, on prudent analysis.

Mr. LANOFF. That is a very popular regulation, Mr. Chairman. The CHAIRMAN. I understand.

I would put into the record at this point Lanoff document No. 3, which is the Upper Avenue Bank Investment Manager Southern Nevada Culinary and Bartenders Pension Trust final accounting, dated May 2, 1979, without objection.

[The material referred to follows:]

*Land & Document
#3*

UPPER AVENUE BANK

INVESTMENT MANAGER OF SOUTHERN
NEVADA CULINARY AND BARTENDERS PENSION TRUST

FINAL ACCOUNTING
. MAY 2, 1979

INVENTORY OF REAL ESTATE RELATED ASSETS RECEIVED UPON
APPOINTMENT OF UPPER AVENUE BANK AS INVESTMENT MANAGER
FOR THE SOUTHERN NEVADA CULINARY AND BARTENDERS PENSION
TRUST

LOANS SECURED BY REAL ESTATE

Asset Management Plan Reference-
Appendix 8, Section No.

A(1) . Murrieta Hot Springs, California

1.) \$2,000,000 loan evidenced in part by:

Loan agreement dated 3/24/73 between
Murrieta Hot Springs and the Pension
Trust

Note for \$2,000,000 dated 3/26/73

Deed of Trust dated 3/26/73, executed
and recorded, together with Rider dated
3/26/73 to Deed of Trust, covering 209
lots in tracts number 4108, 4259, and
4476 consisting of various mobile home
and residential lots.

Supplemental Deed of Trust dated 8/15/74
and recorded 12/12/74 covering 26 lots
in tract number 4259.

Reconveyance Deed dated 12/11/74, recorded
12/12/74 releasing the foregoing Deed of
Trust as to 24 lots on tracts number 4108
and 4259.

Interest in Deed of Trust dated 3/2/76,
recorded 3/17/76 made by Murrieta Hot
Springs in favor of Sierra Charter Corpor-
ation of Nevada as beneficiary, securing
Murrieta's Promissory Note to Sierra Char-
ter in the amount of \$120,000 and assigned
to the Pension Trust by assignment of
beneficial interest thereof dated 8/24/76,
and recorded 9/3/76, as instrument number
132451. Subject documentation reportedly
covers lots 49, 58 and 62 of tract number
4108.

(on hand)

2.) \$5,000,000 loan evidenced in part by:

Loan agreement dated 7/30/73 between
Murrieta Hot Springs and the Pension
Trust and Addendum thereto dated 7/28/75.

Note for \$5,000,000 dated 7/30/73

Deed of Trust dated 7/30/73 and
recorded 7/31/73 covering 556 Acre
Parcel consisting of vacant land.

(on hand)

- 3.) Interest in \$2,000,000 note dated
10/10/75, secured by the Kanlund
Property consisting of approximately
320 acres of vacant land.

(on hand)

- 4.) Interest in a portion of the Core
Property to secure indebtedness of
Sydney Wyman to Sierra Charter Corpor-
ation in the approximate amount of
\$850,000.

NOTE: See Inventory Item No. 26 below
(on hand)

- 5.) Interest in Deed of Trust dated 10/15/75,
recorded 10/27/75 granted by Murrieta
Hot Springs to I.J.K. Nevada, Inc., as
beneficiary, in the amount of \$500,000.

(on hand)

- 6.) Interest in Deed of Trust dated 1/16/76,
recorded 1/19/76 granted by Murrieta
Hot Springs to Shelter Island Hotel Corp.,
Inc., as beneficiary, in the amount of
\$500,000.

(on hand)

- 7.) Interest in "lot paper" with respect to
lots sold by Murrieta Hot Springs to
third parties.

(on hand)

A(4)

Volcano Cliffs, New Mexico

- 8.) Loan having a principal balance of
\$753,046.75, evidenced in part by:

Promissory Note dated 6/22/76 in the face
amount of \$2,000,000 from Palm Development
Corporation to Sierra Charter Corporation,
and endorsed by it to the Pension Trust.

Mortgage dated 7/20/76 and recorded 7/22/76 from Palm Development Corporation to Sierra Charter Corporation, to secure the aforementioned Note covering a 750 Acre Parcel of land located approximately seven (7) miles northwest of Albuquerque, New Mexico.

Assignment dated 8/24/76 and recorded 9/8/76 by Sierra Charter Corporation to Pension Trust of the aforementioned Mortgage.

(not on hand)

A(5)

Meadow Lake, New Mexico

- 9.) Loan having a principal balance of \$44,914.47, evidenced in part by:

Promissory Note dated 6/22/76 in the face amount of \$500,000 from S & F Corporation to Sierra Charter Corporation and endorsed by it to the Pension Trust.
(not on hand)

A(3)

Elephant Butte, New Mexico

- 10) Loan having a principal balance of \$500,000, evidenced in part by:

Promissory Note dated 3/24/76 in the face amount of \$500,000 from S & F Corporation to Sierra Charter Corporation and endorsed by it to the Pension Trust.

Mortgage dated 3/24/76 and recorded 3/31/76 from S & F Corporation to Sierra Charter Corporation securing the aforementioned note, and covering a 9-hole golf course and a portion of a subdivision development located directly north of Truth or Consequences, New Mexico.

Assignment dated 8/24/76 and recorded 9/3/76 by Sierra Charter Corporation to the Pension Trust of the aforementioned Mortgage.

(on hand)

Lake Shore Highlands, New Mexico

11) Loan documents as follows:

Promissory Note dated 5/14/77 for \$1,500,000 by S & F Corporation to Sierra Charter Corporation.

Mortgage dated 5/14/77 and recorded 5/19/77 from S & F Corporation to Sierra Charter, covering parcels of land located near Lake Shore Highlands and in Elephant Butte Subdivision in Sierra County, New Mexico.

Assignment of Mortgage dated 6/15/77 and recorded 1/18/78 from Sierra Charter to the Trustees of the Pension Trust.

NOTE: No advances were made by the Pension Trust with respect to the aforementioned documents.
(not on hand)

REAL ESTATE OWNEDA(2) (b) Gardnerville/Comstock, Nevada

12) Interest in unsold lots in Units 6 and 7.
(on hand)

A(2) (a) 13) Interest in land contracts and deeds of trust with respect to lots in Units 1, 4, 6 and 7 sold by Sierra Charter Corporation.
(on hand).

A(2) (c) 14) Interest in Units 8 and 9
(on hand)

A(2) (d) 15) Interest in Genoa Peak
(on hand)

NOTE: The Pension Trust also has rights and interests under and by virtue of advances of \$8,000,000 and \$1,350,000 to Sierra Charter Corporation secured respectively by Deeds of Trust in the Gardnerville/Comstock real estate, and

by the aforementioned land contracts and deeds of trust with respect to lots sold by Sierra Charter Corporation.

B(1) Lincoln County, Oregon

- 16) Interest in approximately 530 acres of undeveloped land in Lincoln County, Oregon evidenced in part by:

Certificate no. 5 of Seaview Village, Inc., issued in the name of Sierra Charter Corporation of Nevada, for three (3) shares being all of the issued and outstanding stock of Seaview.
(on hand)

OTHER

- B(2) 17) Interest in 1,250 shares Carson Valley Country Club now registered as follows:
"Trustees of the Southern Nevada Culinary and Bartenders Pension Trust".
(on hand)
- B(3) 18) Interest in 2,500 shares Charter Home-builders, Inc.
(not on hand)
- B(4) 19) Interest in 473 shares Swift Construction, Inc.
(not on hand)
- B(5) 20) Interest in 40,625 shares Home Savings Association.
(not on hand)
- B(6) 21) Interest in 16,049 shares Capital Reserve Corporation (Now known as Capital Energy Corporation).
(on hand)
- 22) All right, title and interest in and to 2,500 shares Sierra Charter Corporation, Inc. stock pledged to secure Sierra Charter Corporation, Inc. obligations to Pension Trust, and Morris Shenker's guarantees of said obligations.
(on hand)

- C(1) 23) Interest in Murrieta Hot Springs
\$1,180,208 Note, unsecured obligation from Murrieta Hot Springs to Sierra Charter Corporation.
(on hand)
- C(2) 24) Interest in Morris Shenker \$477,538
Note, unsecured obligation from Morris Shenker to Sierra Charter Corporation.
(on hand)
- C(3) 25) Interest in I.J.K. Nevada, Inc. Notes
payable to Sierra Charter Corporation.
(on hand)
- C(4) 26) Interest in Receivable of approximately
\$850,000 owed by Sydney Wyman to Sierra Charter Corporation.
(on hand)
- C(5) 27) Interest in William Weiss \$30,000
Receivable.
(not on hand)
- C(6) 28) Interest in Howard Chatari \$10,000
Note.
(not on hand)
- C(7) 29) Interest in Barclay Moreno Claim.
(on hand)
- 30) Interest in Prosser Heights, unimproved real estate located in Nevada County, California.
(on hand)
- 31) Interest in promissory note of Thrifty Dutchman, Inc. dated 8/15/74 in the face amount of \$700,000 having at 5/2/79 an outstanding principal balance of \$439,991.36, together with the Guarantee by the Hotel and Restaurant Employees and Bartenders International Union, including two (2) promissory notes of said union, one (1) note dated 10/1/76 in the amount of \$700,000 and the second note dated 10/1/76 in the amount of \$139,000.
(on hand)

- 32) A thirteen and one-half percent (13-½%) interest in the Paul R. and Kathlyn A. Goodman Note bearing interest at 8-½%, and due in monthly installments through 1993, with a principal balance outstanding at 5/2/79 of \$136,032.49.
(on hand)

The foregoing Inventory is intended to describe generally the real estate-related assets with respect to which Upper Avenue Bank has acted as Investment Manager. Said description does not purport to be necessarily exhaustive in its enumeration of the legal rights, claims, and interests relating to said assets. Enumeration of certain legal instruments and documents is intended to be descriptive only, and not to negate the existence of other legal instruments or documents or to limit the scope of the rights, claims, and interests of the Pension Trust or the Investment Manager. Various claims, choses in action, causes of action, and the like pertaining to the various assets are deemed to be under the jurisdiction of the Investment Manager, though not specifically enumerated. Nothing in the aforesaid Inventory shall be deemed to constitute a characterization or interpretation of the legal effect of any instrument or document or of the nature, scope or validity of the rights, claims, or interests of the Pension Trust, nor to constitute any representation or assurance of any kind by Upper Avenue Bank with respect thereto.

Delivered to Thomas L. Karsten Associates, all the aforementioned Real Estate-Related Assets as shown as being on hand

REAL ESTATE RELATED ASSETS ACCOUNT

Schedule of Receipts and Disbursements from August 30, 1977
to May 2, 1979

RECEIPTS:

Hotel & Restaurant Employees & Bartenders International Union Thrifty Dutchman	\$ 311,641.31
Goodman Note Participation	22,189.15
Information Management International Inc. Murrieta Hot Springs & Gardner- ville Installment Payment Collections	148,000.00
Federal Security - New Mexico Installment Payment Collections	24,223.77
Sierra Charter Corporation - Deposits regarding Tahoe Island Park	5,000.00
Received from Swift Construction Co. Net Proceeds of Sale of Swift 40 Acres	43,599.52
Received from Charter Home Builders Net Proceeds of Sale of Mobile Home Trailer Court - Reno, Nevada	14,969.73
Proceeds of Home Savings Association Stock Merger	637,812.50
All principal and accrued interest, less proceeds of lot purchase con- tracts, plus \$15,000 in partial set- tlement of attorney fees re; \$2,000,000 note secured by 2nd mortgage on land in Volcano Cliffs Sub-division Bernalillo County, New Mexico	966,256.27
Title Insurance and Trust-Rebate on Yee Hee Judgement	378.10
Transfers from Cash & Marketable Secur- ities Account	<u>3,459,826.54</u>
TOTAL RECEIPTS	<u><u>\$ 5,633,896.89</u></u>

DISBURSEMENTS:

Attorney's Fees-	
Gardner Carton & Douglas	\$ 767,001.00
Carlins & Kamensky and Joel Carlins	252,603.55
Lionel Sawyer & Collins-	
Gardnerville Nevada Property	1,441.90
Tonkon Torp Galen-Oregon Property	33,730.57
Robinson Stevens & Wainwright-	
New Mexico Property	48,928.78
Rutan & Tucker.- Murrieta Hot Springs Property	42,418.01
Woodburn Wedge Blakley Felsom & Hug - Gardnerville Nevada Property	26,912.31
Levy & Erens	224,711.86
Stark Stewart Simon & Sparrowe-	
Gardnerville Nevada Property	813.66
Jones Jones Bell Close & Brown Ltd.	3,311.02
Other Professionals-	
Price Waterhouse & Co.	
Review of Assets & Liabilities of Sierra Charter Corporation	109,114.57
Coldwell Banker Management Co.	
Real Estate Appraisals	44,250.00
Sanford Shulman - Consulting Work - Oregon Property	17,666.69
Consulting Engineers/Planners - Oregon Property	34,405.30
Real Estate Data Service - Real Estate Investment Consultants-Oregon Property	7,794.32
Security Title Abstract Co., Inc.- New Mexico Property	1,869.00
Costello Preston Ltd. - Architectural Service - New Mexico Property	1,526.42
Valencia County Abstract & Title Co.- New Mexico Property	536.25

DISBURSEMENTS - (CONTINUED):

Westfall Engineers & Consultants Gardnerville Nevada Property	\$ 16,762.36
Ginther/Sea Inc. - Engineers - Oregon Property	17,733.96
C.H. 2/M. Hill - Ortho Mapping - Oregon Property	4,120.00
Regional Consultants, Inc. - Engineers - Oregon Property	2,275.29
Robert C. Lindsay - Land Conserva- tion Study - Oregon Property	4,965.67
First National Bank of Oregon - Review of Documents - Oregon Property	100.00
Title Insurance Trust - Murrieta Hot Springs Property	800.00
Willamette Valley Title Co.- Oregon Property	1,500.00
Title Report - New Mexico Property	1,408.20
P.W. Hughes - Oregon Property	320.00
Valley Bank of Nevada - Escrow Fee - Gardnerville Nevada Property	100.00
Preservation of Oregon Property- Life of Nebraska - Payments of Prior Mortgage on Property	96,371.36
Tahoe Island Park - Payments on Land Purchase Contract	59,507.09
Ted Stirnweis - Payments on Land Purchase Contract	8,000.00
Wilbur Day - Payments on Land Purchase Contract	3,900.00
Transactions re: Gardnerville Nevada Units 6 and 7- Interest Paid on Sierra Charter Corp. \$1.6 Million Dollar Note with Valley Bank of Nevada: Through Gardnerville Development Co.	161,803.27

DISBURSEMENTS - (CONTINUED):

Direct to Valley Bank of Nevada	\$ 125,432.63
Continental Telephone of Nevada	1,217,040.00
Sierra Pacific Power Co.	1,129,350.00
Valley Bank of Nevada - GRID Assessment	491,968.09
Valley Bank of Nevada - Real Estate Taxes	155,000.00
Title Insurance Trust - Yee Hee Judgement	10,000.00
Title Insurance Trust - Indemnity Against Stanley Franklin Litigation	140,000.00
Gardnerville Ranchos General Improvement District for disbursement of legal fees	16,000.00
Title Insurance Trust - Title Insurance	24,519.46
Escrow Account Established at Nevada State Bank - 985,000 U.S. Treasury Bills deposited (Cost \$916,430.14)	
Other-	
Los Angeles Office Expense- Established for collection of Murrieta Hot Springs & Gardnerville Installment Contract Payments	45,668.33
Sierra Charter Corporation - Payroll from October thru December, 1977	75,000.00
Payment of Sierra Charter Corporation Loan Secured by 40,625 shares of Home Savings Association stock	156,132.88
Miscellaneous and Out-of-Pocket:	
Air Transportation	24,112.86
Lodgings, meals, ground transportation and gratuities	22,426.65
Telephone Expense	842.47
Other (Air freight, reproduction of documents, etc)	\$ 1,701.11
TOTAL DISBURSEMENTS	\$ 5,633,896.89

CASH & MARKETABLE SECURITIES ACCOUNT

Schedule of Receipts and Disbursements from August 30, 1977
to May 2, 1979

RECEIPTS:

Contributions	
Initial Contribution received 10/12/77	\$ 1,260,533.03
Subsequent Contributions received from 10/13/77 to 4/11/79	12,063,499.19
Income from Assets Under Management	709,149.40
TOTAL RECEIPTS	<u>\$14,033,181.62</u>

DISBURSEMENTS:

Investments *	10,487,237.58
Accrued Interest on Bonds Purchased	37,432.71
Transfers to Real Estate Related Assets Account	3,459,826.54
M. Segal & Co. - Actuary	1,000.00
Upper Avenue Bank - Fees for Marketable Securities Portfolio	20,866.00
Nevada State Bank - Fees for Custody of Securities	8,756.29
Loss on Sale of Investment	18,062.50
TOTAL DISBURSEMENTS	<u>\$14,033,181.62</u>

- * Included in this figure is cost of
\$985,000 U.S. Treasury Bills @
\$916,430.14, held in Escrow at
Nevada State Bank

CASH AND MARKETABLE SECURITIES ON HAND

<u>Value</u>	<u>COMMON STOCK</u>
6,500 shares	Central & South West Corp.
4,000 shares	Florida Power & Light Co.
5,000 shares	Texas Utilities Co.
	<u>CORPORATE OBLIGATIONS</u>
\$250,000	Bell Telephone Company of Canada 9% due 1/15/2008
250,000	Continental Illinois Corp. 8.50% due 11/1/1985
250,000	Exxon Pipeline Co. 8.25% due 3/1/2001
250,000	G.M.A.C. 8.875% due 7/15/1985
250,000	Guarantee Savings & Loan 8.45% due 3/1/1984
250,000	Household Finance Co. 8.50% due 5/15/1983
250,000	I.C.I. North American 8.875% due 1/15/2003
250,000	Public Service, New Mexico 9% due 5/1/2008
	<u>GOVERNMENT AND AGENCY OBLIGATIONS</u>
\$500,000	Federal Home Loan Banks 8.60% due 11/26/1979
500,000	U.S. Treasury Note 7.125% due 12/31/1979
500,000	U.S. Treasury Note 7.125% due 11/15/1980
1,000,000	Federal Farm Credit 8.45% due 4/1/1982
500,000	Federal National Mortgage Association Debenture 8.2% due 4/10/1984
500,000	Federal National Mortgage Association Debenture 8.60% due 6/10/1985

Cash and Marketable Securities
on Hand

<u>Value</u>	<u>GOVERNMENT AND AGENCY OBLIGATIONS - CONT.)</u>
500,000	Federal Land Bank 8.20% due 1/22/1990
500,000	U.S. Treasury Bond 8% due 8/15/2001
1,000,000	U.S. Treasury Bills due 5/3/1979
	<u>CASH EQUIVALENTS</u>
1,050,000	Ford Motor Credit Corp. due 5/21/1979
	<u>CASH AND SAVINGS</u>
	Nevada State Bank
	Savings Account \$ 88,524.22
	Upper Avenue Bank
	Savings Account \$633,863.41
	<u>CASH</u>
	\$ 4,601.49

Cash and Marketable Securities available for distribution as set forth on page 13: INVESTMENTS *

Delivered to Thomas L. Karsten Associates:

CASH (From savings account)	\$ 500,000.00
-----------------------------	---------------

Delivered to Trainer Wortham & Company, Inc.:

CASH (From savings accounts & on hand)	\$ 226,989.12
MARKETABLE SECURITIES	<u>9,760,248.46 *</u>
TOTAL	<u>\$10,487,237.58</u>

* Included in this figure is cost of \$985,000 U.S. Treasury Bills @ \$916,430.14, held in Escrow at Nevada State Bank

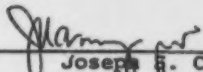
Cash and Marketable Securities in hands of Upper Avenue Bank as resigning Investment Manager after delivery set forth above-

NONE

Respectfully submitted,

Upper Avenue Bank, as resigning
Investment Manager

BY:


Joseph F. Cannizzaro
Vice President and Senior
Trust Officer

The undersigned hereby approve, accept, and agree to the foregoing as a true, proper, and complete accounting of the Upper Avenue Bank as Investment Manager of the Southern Nevada Culinary and Bartenders Pension Trust for the period from its appointment, August 30, 1977, to and including the effective date of its resignation and replacement, May 2, 1979. This agreement shall not operate as an express or implied release of any claims against Upper Avenue Bank, its agents, or representatives, (1) for violation of ERISA, or (2) for breach of the Proposal by Upper Avenue Bank to the Pension Trust dated August 18, 1977.

For the United States Department of
Labor

TRUSTEES OF THE SOUTHERN NEVADA
CULINARY AND BARTENDERS PENSION TRUST:



Jeff D. McLeod

Paul Stafford

Brian Schmitt

Richard H. King

The undersigned hereby approve, accept, and agree to the foregoing as a true, proper, and complete accounting of the Investment Manager of the Southern Nevada Culinary and Bartenders Pension Trust for the period from its appointment, August 30, 1977, to and including the effective date of its resignation and replacement, May 2, 1979.

This agreement shall not operate as an express or implied release of any claims against Upper Avenue Bank, its agents, or representatives: (i) for violation of ERISA; or (ii) for breach of the Proposal by Upper Avenue Bank to the Pension Trust dated August 18, 1977.

Edward B. Stora
For the United States Department
of Labor

Trustees of the Southern Nevada
Culinary and Bartenders Pension Trust

Ben Schmoutey

Jack Stafford

Jeff D. McColl, Jr.

Richard P. Crane, Jr.

Charles R. Adkisson

DATED: May __, 1979

The CHAIRMAN. This is an unpleasant matter. We are going over matters that, in retrospect, I think almost everybody admits they would have tried to have done differently. It is particularly unpleasant to me because of you being a former staffer on this committee.

Mr. LANOFF. I do not consider it unpleasant, Mr. Chairman. This is part of my former job.

The CHAIRMAN. I appreciate that.

Did you make it a practice to report on the reports that you were receiving from Mr. Daly of the Enforcement Division?

Mr. LANOFF. I am sorry?

The CHAIRMAN. Just a moment. Mr. Lanoff, are you familiar with Mr. J. Vernon Ballard?

Mr. LANOFF. Yes. He was my deputy for probably the first 3 years of my administration.

The CHAIRMAN. Was it his practice to report to you on the reports that he was receiving from Mr. Daly of the Enforcement Division?

Mr. LANOFF. Yes.

The CHAIRMAN. On February 1, 1978, Mr. Daly wrote Mr. Ballard a memorandum stating that Labor's Los Angeles area office was still unclear on how to proceed with the *Culinary Workers* case. Mr. Daly said the most pressing questions posed by the Los Angeles office were as follows: One, do we work with the Justice Department in compiling evidence for a criminal investigation? Two, do we turn over our files to the Department of Justice for them to "go it alone?" Three, what is the priority of this case, since the Solicitor of Labor stated it would not go to trial for another year?

We will put that into the record without objection. In fact, all four documents will go in, without objection.

[The material referred to follows:]

1 FEB 1978

MEMORANDUM FOR: J. Vernon Ballard
Deputy Administrator

FROM: Edward F. Daly, Director
Office of Enforcement

SUBJECT: Southern Nevada Culinary Pension Trust Fund
Las Vegas, Nevada
Case No. 72-6118

*Committee
Document
22*

Attached is a copy of a memorandum dated January 17, 1978, that was just received from the Los Angeles Area Office. Enforcement was aware that this memorandum was being sent by the LAAO.

The LAAO requests guidance from the NO concerning the captioned case. It appears that FWBP and SOL must have a meeting in order to render guidance to the LAAO. The most pressing questions posted by the LAAO are:

1. Do we work with the Justice Department in compiling evidence for a criminal investigation?
2. Do we turn over our files to the Department of Justice for them to "go it alone"?
3. What is the priority of this case since SOL stated it would not go to trial for another year?

Dave Allen (SCL)
cc-Los Angeles AO
San Francisco RO
Enforcement
Kane

FWBP:TFKane/dkt 2/1/78

BUREAU SYMBOL NO.	INITIALS	DATE
DRE	R	2/1/78

The CHAIRMAN. Is it not somewhat strange, Mr. Lanoff, that the Los Angeles area office would still be seeking such fundamental guidance more than 1 year after Enforcement initiated the case?

Mr. LANOFF. I do not recall seeing that memo. I do not have it in my file, and I do not believe it was distributed by the committee. However, hearing it from you, I would agree. I would think the Los Angeles office should have known what the policy was by that time.

The CHAIRMAN. Did Mr. Ballard seek your guidance on this matter?

Mr. LANOFF. I do not recall him coming to see me. I must say that, for the most part, I relied on him when it came to possible criminal matters. He was my representative to the joint Labor Department/Justice Department task force and pretty much dealt with all of these matters because of his knowledge and experience.

The CHAIRMAN. Do you know if any guidance was given to the Los Angeles area office?

Mr. LANOFF. No, I do not, Mr. Chairman. I do not recall hearing anything about it or knowing anything about it.

The CHAIRMAN. I think the truth may be embodied in the February 7 Garafolo memo on the following: No. 1, no commitment of Labor personnel to the Justice strike force; and, two, the decision to talk Justice into holding off on doing an immediate criminal investigation.

This memo was addressed to Los Angeles Area Administrator Kenneth Evans. I introduced that memo when I was chatting with Ms. Gallagher.

This Garafolo memo stresses the need to hold off on the criminal investigation for a period of 6 weeks to a few months. To your knowledge, were compliance officers or auditors made available to the strike force in any way?

Mr. LANOFF. I do not know, Mr. Chairman.

The CHAIRMAN. On June 13, 1977, Mr. Kane wrote Mr. Ballard that Dave Allen had advised him, after a discussion with Monica Gallagher, that Dave Slattery and other Justice Department attorneys should be advised that any matter in litigation should be discussed with the Solicitor's Office and not the Office of Enforcement. Are you aware of that memo?

Mr. LANOFF. What was the date?

The CHAIRMAN. That particular memo from Mr. Kane was dated June 13, 1977.

Mr. LANOFF. I am not familiar with that. I do not recall it. That was shortly after I arrived.

The CHAIRMAN. I see. This memo went on to say, "The relationship between the Justice Department and the Office of Enforcement has been very close and friendly, and it is believed that certain actions of the SOL may jeopardize these relations." Were you aware of Mr. Kane's concerns at the time?

Mr. LANOFF. I was aware that there was a lot of fighting back and forth between the Solicitor's Office and my Office of Enforcement. One of the things I asked Mr. Ballard to do was end that. I am afraid he failed.

The CHAIRMAN. He expressed to Mr. Ballard, your deputy—I think Mr. Kane went on to tell Mr. Ballard that both Kane and Ed

Daly, "believe that the role of the Solicitor should be placed in perspective concerning investigative matters. The administrator is the only one who can define the Solicitor's role within PWBP matters." You were the administrator at that time.

Mr. LANOFF. As I understand it, Mr. Chairman, there was a definition of roles. To the extent a case was already in litigation, it was the Solicitor's Office that would take the lead in dealing with Justice. To the extent a case was not yet in litigation but was in the investigatory mode, then it was the program that would deal with the Department of Justice.

The CHAIRMAN. OK. You were supposed to be in charge, whether Ms. Gallagher thought she was or not. Did you or Mr. Ballard take any action to define the Solicitor's role as a result of Mr. Kane's memo?

Mr. LANOFF. I just do not recall for sure. I believe there were some meetings that were held that I asked Mr. Ballard to conduct with representatives of the Solicitor's Office, and I think for a while there were peaceful relations, but I just do not recall for sure. As I say, I pretty much asked him to handle that.

The CHAIRMAN. OK. On June 3, 1977, Mr. Daly wrote Mr. Ballard a memo that there was a, "lot of mistrust that should be eliminated between Labor and Justice." Were you aware of this mistrust?

Mr. LANOFF. I was aware of the mistrust. I was quite unhappy about it and talked with Mr. Ballard about it several times. After a while, Labor and Justice agreed to a relationship which consisted of a memo of understanding and which also consisted of bimonthly meetings with representatives of both the Labor Department and the Justice Department in attendance.

I was told by Mr. Ballard that, after the memo of understanding was entered into and after these meetings began to be held, relations significantly improved between the two agencies.

The CHAIRMAN. We will put that memorandum to J. Vernon Ballard from Edward F. Daly, Director, dated June 3, 1977, into the record as Lanoff document No. 5, without objection.

[Material to be supplied follows:]

June 3, 1977

Edward F. Daly, Director
Office of Enforcement

Southern Nevada Culinary Workers &
Bartenders Pension Trust Fund
Las Vegas, Nevada
Case 72-6118

Lawff
Dorin st
#5

To: J. Vernon Ballard
Deputy Administrator

Attached is an update on the Southern Nevada Culinary Workers Pension Fund. T. F. Kane makes certain recommendations. I suggest that you or a representative of the Administrator's Office discuss with appropriate SOL personnel what course we should take. The basic problem, as I see it, is to determine how two government agencies can best cooperate and, at the same time, carry out our primary function under ERISA and theirs under the criminal statute. Further, it may be well later on for SOL and us to confer with Justice so that everything will be open and above board. There is an awful lot of mistrust on both sides that should be eliminated.

Attachment

PWBP:EDaly:fa:6-3-77

Thomas F. Kane, Chief
Division of Reporting Enforcement

Southern Nevada Culinary Workers &
Bartenders Pension Trust Fund
Las Vegas, Nevada
Case 72-6118

To: Edward F. Daly, Director
Office of Enforcement

This memo will update you concerning the investigation of the Subject Fund.

A hearing on our motion for a Preliminary Injunction was scheduled for May 9, 1977. This hearing was postponed by Judge Foley to May 24, 1977. During the interim period SOL Attorney Dave Allen and the defendants attempted to obtain a Receiver for the Fund.

Apparently since both parties agreed to obtain a Receiver for the fund, Judge Foley removed this matter from his Court Calendar subject to being placed back on his Court Calendar within 10 days notice. SOL and defendants agreed to this action.

To-date both parties have been unable to obtain a Receiver for the Fund.

The writer recently spoke to Attorney Dave Allen and was advised that DOL is proceeding with its case re prohibited transactions, diversifications and possible fiduciary violations. Dave Allen is preparing a list of persons to take their depositions within the next two weeks.

The Compliance Officers in LAAO are in the process of writing an interim EOL. A draft should be completed by June 6th.

The Department of Justice has become deeply involved in this matter since they received an allegation of a \$100,000 kickback to a person associated with the Culinary Fund. The Department of Justice also had received information from a newspaper reporter that involved fraudulent sales of Murrieta Hot Springs' land. These matters are to be the bases of a Grand Jury investigation conducted by the USA in Las Vegas.

The writer believes that because of the action by the Department of Justice that DOL has to make a decision as to the role that will be taken by DOL. Should DOL cooperate fully with Justice or proceed alone in its investigation of the Culinary Fund?

The writer believes that DOL should cooperate fully with the Justice Department for the following reasons:

- (1) Both DOL and Justice will be examining the same books and records in many instances and will be duplicating the field work.
- (2) It will insure that DOL will be aware of the Justice findings which may reveal fiduciary breaches and other violations that could be remedied more readily by civil action than criminal action.
- (3) Cooperation will insure that DOL gets credit for the investigation and its results. Whereas non-cooperation will insure that criminal action will take precedent over civil remedies even if civil remedies are the best actions.
- (4) Non-cooperation would necessitate any civil remedies as being held in abeyance by Justice Department until criminal actions are completed which may take years.

cc: SFRO
 LAAG
 SOL-Dave Allen
 Chron.
 Enforcement ✓
 FWBP:TFKane:glv

SYMBOL NO.	INITIALS	DATE
DKE	RV	6/2/77

The CHAIRMAN. Mr. Lanoff, are you familiar with the default on land improvement work on Shenker's land in Nevada by Environmental Communities, Inc.—ECI, it is sometimes called—one of the companies controlled by Shenker?

Mr. LANOFF. I am sorry, none of it is registering. Could you please repeat the question?

The CHAIRMAN. Were you familiar with the default on land improvement work on Shenker's land in Nevada? The default was by Environmental Communities, Inc. [ECI] which also was one of the companies controlled by Mr. Shenker. Are you familiar with that?

Mr. LANOFF. I just do not recall that, Mr. Chairman.

The CHAIRMAN. I think maybe you should, because Mr. Edward F. Daly, Director of Labor's Office of Enforcement, informed you about it in a memorandum dated July 12, 1978. Do you recall reading this memo, Mr. Lanoff?

This will be Committee document No. 28. We will put it into the record, without objection.

[The material referred to follows:]

12 JUL 1978

MEMORANDUM FOR: Ian D. Lanoff
Administrator

FROM: Edward F. Daly, Director
Office of Enforcement

SUBJECT: Southern Nevada Culinary and Bartenders
Pension Trust, Las Vegas, Nevada
File 72-6118

*Daly
UAB
Committee
Document
#28*

The following is a very brief recapitulation of points which create scepticism on the part of members of the Office of Enforcement as to the "work outs" being performed by the appointed Asset Manager, Upper Avenue Bank (UAB). The appointment of UAB was approved by the USDC, Las Vegas, Nevada, since DOL did not object to this appointment for the Southern Nevada Culinary and Bartenders Pension Trust (Culinar Fund).

The Culinary Fund is involved in the following loans and contingent liabilities with Morris Shenker and his corporate entities:

I. MURRIETA HOT SPRINGS (100% Owned Shanker Entity)

a. Loan #1	\$2,000,000	
b. Loan #2	5,000,000	
c. Interest earned, not collected through February 28, 1977	1,169,200	
d. Non-book Real Estate Warehousing Loan at Valley Bank	<u>2,240,000</u>	\$10,409,200

II. SIERRA CHARTER CORPORATION (100% Owned Shanker Entity)

a. Loan	\$7,450,000	
b. Loan-Addendum One	1,350,000	
c. Loan-Addendum Two through February 28, 1977	8,660,000	
d. Interest earned, not collected through February 28, 1977	2,058,100	
e. Non-book guaranty of unsecured corporate debt at Valley Bank	2,100,000	
f. Irrevocable Letters of Credit	<u>1,595,200</u>	\$23,213,300 <u>933,622,500</u>

BUREAU SYMBOL NO.	INITIALS	DATE
DCE	RV	7/11/78

The Culinary Fund guaranteed the above obligations of Murrieta Hot Springs (MHS) and Sierra Charter Corporation (Sierra).

It should be noted that the loan of \$7,450,000 set out above was entered into on June 7, 1974, and was personally guaranteed by Shenker.

On December 1, 1975, a Second Addendum was entered into between the Culinary Fund and Sierra. Sierra agreed to guarantee all of MHS's debts to the Fund and Shenker personally guaranteed all additional advances to Sierra in addition to his guarantee of the original loans.

Another entity involved in the development of land by Shenker is the Gardnerville Ranchos Improvement District (GRID). GRID issued approximately \$6 million in special assessment bonds which were to be used for construction of improvements - i.e., sewers, roads, utilities, etc., on the land in the Gardnerville District owned by Sierra. Sierra had contracted with GRID to do the improvements while preparing the land for marketing. GRID agreed as long as the personal guarantees of Shenker and Stanley I. Franklin, former president of Sierra, in the amount of approximately \$5.5 million were included in the contract. Shenker and Franklin agreed. Sierra then subcontracted the work to Environmental Communities, Inc. (ECI), which was Shenker controlled. ECI failed to complete the assessment work but managed to receive almost all of the bond funds before declaring bankruptcy. It should be noted that C. E. "Red" Swift, who was involved in other land deals with Shenker, was in a GRID District position which approved the disbursement of the GRID funds to ECI prior to and at the time of the ECI bankruptcy.

From the above it appears that Shenker and Franklin are personally liable for \$5.5 million of the GRID bonds which are in default.

According to the present plan entered into by the UAB, the builder, M. Paul Heck, will receive a loan of \$3.6 million from the Valley Bank of Nevada to complete the work necessary in order to build and market the Gardnerville land covered by the GRID bonds. The Culinary Fund will subordinate its first position on this land to the Valley Bank. Heck, the developer, must purchase at least 200 lots per year and remit \$12,000 per lot to the Culinary Fund. Heck will provide all marketing, contracting, and other overhead services. The \$12,000 forwarded to the Culinary Fund will be distributed as follows:

\$3,500	- GRID bonds
4,320	- Valley Bank (\$3.6 million loan)
2,090	- Principal on the \$1.6 million Sierra balance
2,090	- Pension Trust (up to 1/2 paid to Valley Bank
<u>\$12,000</u>	on \$1.6 million loan if not used for GRID
	assessments and interests)

According to the UAB, there are 1020 unsold lots in Units 6 and 7 in Gardnerville. When 800 lots are sold, the Valley Bank will be fully paid.

Previously, the UAB entered into a land deal which will necessitate the further use of Culinary Fund funds. This land deal involves Sasview Village, Inc., which contains approximately 530 acres in the vicinity of Lincoln City, Oregon. This land was purchased by Sierra for \$3,000 cash and the assumption of over \$850,000 in liens. The UAB had this land appraised and it is valued at \$930,000. With additional cost necessary to get this land platted and ready, the UAB will involve the use of Culinary Fund funds in excess of \$1 million.

It should be noted that the \$850,000 in liens on this land was assumed by Sierra, which is 100% owned by Shenker.

Both of these land transactions appear to benefit Shenker more than the Culinary Fund. Both of these transactions appear to be "orchestrated" by Shenker, not UAB.

The Office of Enforcement believes that the UAB should obtain the personal guarantee of Shenker and return to him all the land with their liens and debts. After all, he negotiated the land deals for Sierra and used the Culinary Fund funds for purposes other than what the Culinary Fund expressly intended. The Culinary Fund initially disbursed the funds to assist Sierra in the marketing of the MHS land. Shenker used the funds to purchase other land from other Shenker entities and associates who received the cash and the Culinary Fund got inflated debts in return.

The Office of Enforcement believes that DOL should take some immediate action in this matter before the assets of the Culinary Fund are further dissipated by Shenker manipulations.

cc-Ballard
Burghardt (SOL)
San Francisco RO
Los Angeles AO

Enforcement
Chron

PWBP:TFKane/dkt 7/11/78

Mr. LANOFF. The only thing I have in my file is the memo on being told by Mr. Daly by the name check on Mr. Heck had produced nothing.

The CHAIRMAN. Look at the memo. It is right in front of you. My staff just brought it to you.

Did you know that Mr. Shenker and Stanley Franklin, the president of Sierra, had personally guaranteed \$5.5 million in improvement bonds for sewers, roads, and the like in the Gardnerville, Nev., district owned by Sierra? That is found right in the memo. Are you aware of that?

Mr. LANOFF. I am aware of the Gardnerville Ranchos Improvement District matter. I was not aware until now that this company was involved that actually resulted in the possible default on the bonds.

The CHAIRMAN. Did you know that Sierra contracted with the Gardnerville Ranchos Improvement District—sometimes referred to as "GRID"—to do the improvements, and then got the work subcontracted to the Shenker-owned entity known as ECI?

Mr. LANOFF. Up until now I was not aware of ECI, so I did not know about any of this.

The CHAIRMAN. Did you know that ECI failed to complete the improvements—or anybody failed to complete the improvements—but managed to receive almost all the bond funds anyway before declaring bankruptcy and going into bankruptcy?

Mr. LANOFF. The only thing I knew was, from the letters I had received and the analysis that I had gotten from Mr. Eccles and Mr. Marshall, that one of the arguments the UAB was making in support of its moving ahead with Mr. Heck was that it was concerned about the rights of GRID against the plan in connection with this particular transaction.

The CHAIRMAN. Did you know that Mr. C. E. Red Swift, who was involved in other land deals with Shenker, was in a GRID district position which approved the disbursement of the GRID funds to ECI prior to and at the time of the ECI bankruptcy?

Mr. LANOFF. Until seeing Mr. Swift's name in this memo, I never heard of him.

The CHAIRMAN. Does not this entire arrangement, if true, smack of criminal fraud, Mr. Lanoff?

Mr. LANOFF. I am afraid, Mr. Chairman, I am just not a criminal lawyer and really could not tell you. I would imagine that, if Mr. Daly and Mr. Kane thought so, they would have either let Mr. Ballard or me know about their opinions, and we would have referred it to Justice.

The CHAIRMAN. That is how they let you know about it. The memorandum is to you.

Mr. LANOFF. They were the people I relied on to let me know what we are talking about in connection with crimes. As I say, I pretty much left it up to Mr. Ballard to take care of our connection with the Justice Department.

The CHAIRMAN. If there was any mistake in interpreting this particular memorandum to Ian D. Lanoff from Edward F. Daly, it would have been Mr. Ballard's mistake?

Mr. LANOFF. I take responsibility for that. I was the administrator, after all, but I am just telling you that, to the extent that there

were matters that may have been criminal matters, I relied on Mr. Ballard and simply assumed that they would be referred to Justice.

The CHAIRMAN. Did anyone refer this matter to the Department of Justice?

Mr. LANOFF. Until your telling me that, I simply was not aware of that. I think as you have learned, Mr. Chairman, and as I have learned through the years, Mr. Kane is not shy, and if he felt that this involved a criminal matter, I simply cannot understand why he would not say that and bring it to either my attention or Mr. Ballard's attention by actually saying this is a potential criminal matter.

For a person like myself who, in the course of a day, had a tremendous amount of paper go past my desk, that would have been a great help me to focus my attention on something like that, and that is what I would expect from my Office of Enforcement.

The CHAIRMAN. He claims that he did—that he informed you.

Mr. LANOFF. Early, or in this memo?

The CHAIRMAN. This memo certainly indicates it, but I think—

Mr. LANOFF. Mr. Kane has testified that he orally recommended to me that this involved criminal matters that should go to the Department of Justice?

The CHAIRMAN. He told my staff that in an interview, that he had told you that.

Mr. LANOFF. I simply do not recall that.

The CHAIRMAN. OK. I think the memo speaks for itself. When you have some time, you might want to read that memo. If you would care to submit anything to the committee, we would be happy to have it in writing.

Let me ask you this: In the same memo that we were just discussing, Mr. Daly states that Shenker and Franklin—

Mr. LANOFF. Excuse me, Mr. Chairman. When did these matters occur? I cannot tell from the memo.

The CHAIRMAN. What matters are you talking about?

Mr. LANOFF. I am talking about the Environmental Communities, Inc., and the Red Swift connection. Is this not just a summary of what happened much earlier?

The CHAIRMAN. This is a memorandum talking about what happened.

Mr. LANOFF. But is this describing what is happening on July 12, 1978, or a memorandum describing what happened in 1975?

The CHAIRMAN. I think it was describing what happened while the statute was still alive. This was July 12, 1979. It says right there, "It should be known that the loan of \$7,450,000 set out above was entered into on June 7, 1974, was personally guaranteed by Shenker on December 1, 1975 . . ." I think the memo speaks for itself. Why do you not read it, and if you have any comments you would like to make in writing, we would be happy to keep the record open.

Mr. LANOFF. Sure. But it is just strange to me, Mr. Chairman, that Mr. Kane—I just do not find that credible, to tell you the truth—that he would come to me in July 1978 to tell me that something criminal happened in 1975. But, as I say, I just do not recall him doing it.

The CHAIRMAN. I see. In the same memo that we were just discussing, Mr. Daly states that Shenker and Franklin appear to be personally liable for \$5.5 million of the GRID bonds that are in default. Did you know that the pension trust assumed that liability as the result of the Upper Avenue Bank's asset management plan? Were you aware of that?

Mr. LANOFF. All I can recall is reading that the Upper Avenue Bank considered itself potentially liable to GRID. That was their opinion and apparently an opinion that had been rendered by the law firm that represented the UAB.

The CHAIRMAN. Of course the Ken Marshall report made that clear also, had you read it.

Mr. LANOFF. I did read it, Mr. Chairman. That is why I sent it to Mr. Lebowitz.

The CHAIRMAN. I see.

Do you recall that Mr. Daly warned you that both the Gardnerville and Sea View Village bailouts proposed by UAB "appear to benefit Shenker more than UAB," and "appear to be orchestrated by Shenker, not UAB?" Were you aware of that?

Mr. LANOFF. I seem to recall seeing that in one of these memos, and I just cannot tell you which one right now. Those were the kinds of things that we discussed at the series of meetings that I conducted to discuss these matters between the time that the UAB first proposed the asset management plan and the time that, finally, in January 1979, I gave them the green light on the Heck transaction. These are the kinds of things we talked over, and the ultimate conclusion was, based on everything that we had learned in the course of that time, that the asset management plan should not be objected to in court.

The CHAIRMAN. Do you recall that Mr. Daly urged you to take immediate action on this matter, "before the assets of the Culinary Fund are further dissipated by Shenker manipulations?"

Mr. LANOFF. It is very possible, but those are the kinds of things, as I say, we talked about, and the ultimate decision was to go with the UAB and not go to court.

The CHAIRMAN. You did not take any other actions, other than to go with UAB?

Mr. LANOFF. The actions I took were—I wrote a letter to the UAB, and I held up their proceeding on these transactions. I said in those letters that, based on Mr. Daly's recommendations to me, we needed to do more investigation before we would agree to let them go ahead with it, and that is what we used the time for—to investigate these transactions.

Mr. Kane was involved, Mr. Daly was involved, Mr. Stern was involved, Mr. Marshall was involved, and the Solicitor's Office was involved in all of these discussions. We used the time to do that. We held up the Heck transaction for quite some time.

The CHAIRMAN. The quote that you recalled hearing is in this very memo, and that is where Mr. Daly warned you that both the Gardnerville and the Sea View bailouts proposed by UAB, "appear to benefit Shenker more than UAB and appear to be orchestrated by"—

Mr. LANOFF. I never saw any evidence of that, Mr. Chairman.

The CHAIRMAN. Mr. Lanoff, Mr. Kane has testified that he informed you on October 12, 1978, that Paul Heck had two bankruptcies and filed for a third prior to his becoming engaged in the Gardnerville project on which he is now in default. Do you recall being so informed by Mr. Kane?

Mr. LANOFF. I recall being informed; I do not recall if it came from Mr. Kane or what the date was. I do recall that I took immediate action, we looked into it, and we immediately called it to the attention of the UAB. I wrote it a letter telling it that it could not proceed with the transaction because of what we had discovered.

I believe that is the October 1978, letter that I wrote to Mr. Hoffman telling him that, based on what we had discovered about Mr. Heck, the UAB could not proceed with the transaction and probably should not. We gave it an opportunity to get back to us. That was the reason for Mr. Marshall going to meet with UAB in December 1978.

He reported back in Mr. Eccles' memo that the bank still wanted to proceed, another large financial institution, Crocker Bank, had vouched for Mr. Heck and were using him on another project, and made all sorts of other arguments in support of the bank proceeding with Mr. Heck despite the bankruptcies.

The CHAIRMAN. Why was this not done before July?

Mr. LANOFF. By UAB?

The CHAIRMAN. Yes.

Mr. LANOFF. I think that is a good question and a worrisome question. That is the question we raised with UAB, and it was embarrassed.

The CHAIRMAN. That is not what I am talking about. Why was not your investigation ordered before July?

Mr. LANOFF. Investigation of?

The CHAIRMAN. Of Mr. Heck.

Mr. LANOFF. I believe that is when we first learned about Mr. Heck—July 1978. That is when we were told about the Gardnerville transaction and Mr. Heck, I believe.

The CHAIRMAN. He was accepted in July as the developer.

Mr. LANOFF. It may have been before July, but I have this memo where we were checking him out—I wrote a letter in July to Mr. Hoffman telling Mr. Hoffman that it could not proceed with Mr. Heck until we had a chance to check out Mr. Heck. That was Mr. Daly's recommendation to me.

The CHAIRMAN. When was that written?

Mr. LANOFF. July 5, 1978.

The CHAIRMAN. Let me point out to you that Mr. Kane has told our investigators—and I think he testified yesterday, if I am correct—that you never called for an investigation of Heck at all. That his investigation was self-initiated when he saw something that he did not like in Heck's financial statement. I would like to know who is telling the truth. Is it Kane, or did you call for an investigation of Heck?

Mr. LANOFF. I have a memo from Mr. Kane and Mr. Daly of August 21, 1978, where they report setting up a meeting with Mr. Heck to review the financial records. I believe I also have a memo that shows that I was the one who asked them to do it, but I will have to find it.

The CHAIRMAN. If you would supply those to the committee, we would appreciate it.

[The material referred to follows:

Thomas F. Kane, Chief
Division of Reporting Enforcement

Southern Nevada Culinary and Bartenders
Pension Trust
Las Vegas, Nevada
File-72-6118

(19)

To: Edward P. Daly, Director
Office of Enforcement

Re: M. Paul Heck

On August 18, 1978 at approximately 2:30 p. m. I telephonically contacted Mr. Heck at (916) 836-2561. Telephonic contacts on August 17, 1978 were unproductive because his child was in an automobile accident and he was out of contact with his office.

I attempted to set up a meeting at our San Francisco AO but he said he would have to fly down as it is approximately 250 miles away. I therefore set up a meeting with Mr. Heck for August 23, 1978 in Reno Nevada, which is the closest airport to Blairsdon, California.

In discussing the reason for this meeting-to review his financial statements-I was advised that he was preparing another financial statement which he would make available at the time of our meeting. He also advised that he was working on the Culinary Fund's project in Gardnerville for the past two months. In fact he had a meeting with the GRID people on Monday night, August 14, 1978 and settled the last impediment as far as he is concerned. He stated that he is getting ready to start working this project full time within the next 20 to 30 days, and he will be ready for his first "draw" on the 3.6 million-dollar loan.

This information was telephonically forwarded to Ian Lanoff on August 18, 1978. ✓

PWEP:TFKane:bg

cc-Lanoff
Ballard
Judy Burghardt (SOL)
Kane

See Kane Document #6 pg.20

Mr. LANOFF. As I said, I heard that Mr. Kane had testified yesterday that the investigation of Mr. Heck was conducted too late, but that is simply not true, based on what I have in my files.

The CHAIRMAN. I think the memo you referred to—if I recall correctly—you said was in August, and Heck had already been hired in July.

Mr. LANOFF. Heck had not been hired, and the transaction did not go through until March 1979. In July we wrote to Mr. Hoffman and told him he could not proceed with Mr. Heck until we had a chance to investigate Mr. Heck. That was done at Mr. Daly's request.

The CHAIRMAN. If you had known that Mr. Heck was connected with underworld influences, you would not have allowed him to have this position, would you?

Mr. LANOFF. Absolutely not.

The CHAIRMAN. If you had known that he had gone into bankruptcy two times before, you would not have allowed him to have this position, would you?

Mr. LANOFF. When we learned about the bankruptcy, we raised that with the UAB, and we told it not to proceed. We asked it to respond to what we had found. It did respond at the December 1978, meeting that, notwithstanding the bankruptcies, Mr. Heck should be permitted to proceed.

The CHAIRMAN. He got a \$3.6 million loan before all this happened.

Mr. LANOFF. First let me say that, at Mr. Daly's recommendation, we insisted that UAB set up an arrangement whereunder Mr. Heck would not get any of the \$3.6 million disbursement; the money would go directly to the contractor on the property.

The CHAIRMAN. If that was set up, then he should not have gotten the \$3.6 million.

Mr. LANOFF. I do not believe that he ever did.

The CHAIRMAN. Oh, yes. He got it; he is being sued—

Mr. LANOFF. According to Mr. Marshall's draft report—the second report—one of the protections that was put into this asset management plan was that Mr. Heck would not get the money.

The CHAIRMAN. Mr. Young, did Mr. Heck get \$3.6 million, or any substantial part of it?

Mr. YOUNG. There is current litigation between the investment manager and Mr. Heck. From that litigation we could discern who got what.

I would not, without looking specifically at the terms of each part of the complaint, be willing however, to speculate on any allegations against Mr. Heck. I would, be willing to get that information and provide it to the committee.

Mr. LANOFF. One of the protections was that Mr. Heck would not get the money.

The CHAIRMAN. I see. It is our understanding he did get the money.

Mr. LANOFF. If that was true, it was a violation of the asset management plan, as described by the bank to me before I approved its going ahead with Mr. Heck.

The CHAIRMAN. OK. Thank you, Mr. Lanoff.

Mr. LANOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Let me just conclude these hearings for today. Once again, we have had a sad picture painted for us of opportunities lost by the Department of Labor to utilize effectively the tools provided by ERISA to confront and correct problems brought to their attention in more than adequate time. The Department's monitoring machine again appears to have worked, alerting those responsible for pursuing litigation in sufficient time to proceed.

Once again we have seen the Department's Solicitor's Office drop the ball on this particular case as to cooperation with the Justice Department's criminal inquiries. Once again we have seen appointment of investment managers, in lieu of court control, produce a result which aggravated instead of corrected the problem.

In the Senate's Permanent Subcommittee on Investigations' report on their 5-year investigation of the Central States pension fund, the subcommittee stated:

So many irreparable mistakes and foolish miscalculations were caused by the Solicitor's Office over the past 5 years, it would appear that the new leaders of the Labor Department would be better served by carefully reviewing the personnel slate, with special emphasis on individuals involved in the *Central States* case. The Department of Labor should carefully review and analyze the abilities and interests of these individuals in the Solicitor's Office to determine if their qualifications and attitudes are in accordance with the goals of the Government in protecting the rights of each and every union member whose trust fund assets have been dissipated.

In the next few months we will be continuing this examination of the Department's action and inaction with regard to its duties to protect pension funds and benefits of American workers.

There have been some lame excuses and attempts to rationalize by segments of business, union leadership, and others. These are not going to thwart this committee's efforts in reviewing these matters.

Portraying these investigations as anything but in the best interests of the workers, it seems to me, is pure bunk. Those in union leadership who cry foul in the face of ever-mounting evidence protest too much.

If anything, honest and dedicated union leaders and business people should aim their wrath at those who arrogantly taint the image of unions and their members. Those who would greedily manipulate the hard-earned retirement dollars of our work force are those who should be targets. I do not think any double-think statements by public relations people can refute evidence uncovered by these hearings and the exhaustive findings of the Permanent Investigations Subcommittee, whom I would like to praise at this time.

Union members' pension funds should not be the personal piggy-bank of leadership or trustees.

We read of families of five or more having houses foreclosed on for nonperformance on 2 or 3 monthly payments. Some are laid-off union members. Yet we have had to listen to tales of Mr. Shenker's exploits. I only wish we could reverse this situation.

There are many hard-working, dedicated Government employees in the Labor and Justice Departments who have faithfully executed their duties and have vigorously and many times courageously fought to uphold the laws.

We will in the course of these hearings be specifically examining the trials some of these people have endured for doing their jobs

and insisting, sometimes at great personal risk, that their departments do the right thing.

Concluding these hearings, I want to put the Labor Department on immediate notice. We have heard acknowledgements and concessions to our criticisms from Department officials.

We want existing laws vigorously enforced. We want complete package referrals sent to Justice whenever criminal prosecution is warranted. We want efficient and timely actions filed and pursued in civil cases. We want to see a computerized tracking system implemented to complement these improvements or the best tracking system the Department can afford.

We want the Solicitor's Office to propose and submit legislative remedies, where needed, to accomplish these tasks. Specifically, they should consider submitting legislation to bring criminal sanctions for ERISA violations, such as those discussed here today, that are clearly fraudulent.

I thank all our witnesses for their candor. I think true corrective actions are many times a bitter pill to swallow. But I am convinced that the Department and, more important, the millions of plan beneficiaries will be better served in this manner.

I am disturbed that both the Permanent Subcommittee on Investigations and this committee have found a lack of cooperation from the Justice Department. I am not sure that it is totally essential for us to have that cooperation to make the case I think we have made in the last couple of days. It certainly would be enlightening and helpful for future cases and perhaps even for this case if they cooperated.

It is helpful for courts to know we are watching this, and expect these matters to proceed with diligence and dispatch. I think it is time to start taking these people on and call a halt to this kind of activity.

I am going to ask everybody at the Labor Department to continue to cooperate, because we are going to go through these matters. It is never easy for us, and it is not a happy task for us to perform.

If these hearings have shown anything, it is that a better job can and must be done.

At this point I order printed all statements of those who could not attend and other pertinent material submitted for the record.

[The material referred to follows:]

Callagher
Document #1A

APPENDIX 1
SECTION A

RECEIVED
AND FILED

APR 9 1977

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BY ROBERT J. FITZGERALD
CLERK
DEPUTY

RAY MARSHALL, et al.

Plaintiffs

vs.

BEN SCHMOUTEY, et al.

Defendants.

Civil Action No.
CV-LV-77-47-RDP

STIPULATION

Plaintiff Ray Marshall, Secretary of the United States Department of Labor, and defendants Ben Schmoutey, Jack Stafford, Richard P. Crane, Jr., and Charles Adkisson (being the duly appointed and acting trustees of the involuntary plaintiff trust in this action), by and through their respective counsel hereby stipulate as follows:

1. Appointment of Investment Manager.

Subject to the terms and conditions of this Stipulation, the trustees of the Plan have appointed the Upper Avenue Bank of Chicago, Illinois as the Investment Manager (herein the "Investment Manager") for the real estate related assets of the Southern Nevada Culinary and Bartenders Pension Trust (hereinafter the "Plan") as the term "investment manager" is defined in section 3(38) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1002(38).

2. Assets to be Managed.

The Investment Manager shall take control of all of the Plan's real estate-related assets (deemed to include all loans secured by real estate), and of its cash and cash equivalent assets ("cash assets"), except the portion of such cash assets which is necessary to pay benefits as called for by the Plan's controlling instruments and to provide for the expenses of administering the Plan and a portion of such cash assets

1 which shall be committed to the management of the invest-
2 ment manager who presently manages the Plan's equity port-
3 folio, or such successor, as may from time to time be ap-
4 pointed by the trustees. The expenses of administering
5 the Plan shall include, but not be limited to, reasonable ex-
6 penses incurred in connection with the collection of con-
7 tributions to the Plan, the employment of such administrative,
8 legal, actuarial, expert, and clerical assistance as may be
9 necessary for carrying out the purposes of the Plan (including
10 compensation of the Investment Manager for his services to
11 the real estate related assets of the Plan), and the purchase,
12 owning, or leasing of such premises, materials, supplies,
13 and equipment as may be necessary for the operation of the
14 affairs of the Plan.
15

16 Within thirty days after approval of this Stipulation
17 by the Court, and thereafter, within thirty days prior to
18 the beginning of each calendar quarter, the trustees shall
19 provide the Investment Manager a quarterly estimate, in ad-
20 vance, of amounts of cash necessary to pay benefits and meet
21 these administrative expenses. The trustees shall also main-
22 tain a reserve fund of \$400,000 to meet expenses which exceed
23 those estimates. The trustees shall monthly deduct from in-
24 coming cash, and set aside for the payment of benefits and
25 meeting of administrative expenses, the amounts set out in
26 their estimate. The trustees shall also deduct a percentage
27 of the month's contribution income equal to the percentage of
28 the total assets which were under the management of Scudder,
29 Stevens & Clark, Inc. on January 1, 1977, and make this amount
30 available to Scudder, Stevens & Clark, Inc. or any successor
31 manager of this portfolio. The remaining contribution income,
32 after these deductions, shall be made available to the Invest-
ment Manager appointed pursuant to this stipulation. The

1 trustees shall deposit any excess amounts, after expenses
2 of administration are net, in the reserve fund. When the
3 reserve fund exceeds \$500,000 as a result of such deposits,
4 the trustees shall make such excess amounts available to
5 the Investment Manager.

6
7 3. Powers of Real Estate Investment Manager.

8 Subject only to the specific limitations of this stipu-
9 lation and such restrictions as may be imposed by the Court,
10 the Investment Manager shall have the power to manage, ac-
11 quire, or dispose of any of the Plan's assets confided to
12 his management, and to take whatever action with respect to
13 such assets as the Plan trustees would have the power or
14 authority to take had the Investment Manager not been ap-
15 pointed; provided, however, that the Investment Manager shall
16 have no authority to delegate his fiduciary responsibilities
17 with respect to the Plan assets confided to his management.
18 The powers of the Investment Manager shall include the power
19 to make claims and demands and to sue on behalf of the Plan,
20 to foreclose on its security interests, to deny claims against
21 the Plan, to defend against actions in law or equity against
22 the Plan, and to compromise and settle claims for and against
23 the Plan. The Investment Manager shall have no duty or
24 authority to pursue claims the Plan may have against pre-
25 sent or former trustees of the Plan, or any of its agents,
26 consultants or representatives, nor shall the Investment
27 Manager have the authority to intervene in or become a volun-
28 tary party to the instant action.

29 The Investment Manager shall have custody of all books,
30 records, and documents owned by the Plan relating to the
31 assets confided to his management which are now in the
32

////

1 possession or custody of the trustees, the Plan's admini-
2 strator, or the Plan's or any trustee's counsel. Nothing
3 contained herein nor any action taken pursuant hereto
4 shall be construed as a waiver of the attorney-client
5 privilege of any party to this stipulation. The Invest-
6 ment Manager shall timely furnish to the Plan trustees
7 all information appropriate for their compliance with
8 ERISA and other applicable law, and shall make available
9 to the parties to this stipulation such books and records
10 relating to the Plan assets under his control as may
11 be requested in writing upon reasonable notice to all
12 other parties.

13 4. Real Estate Investment Manager is Fiduciary.

14 The Investment Manager shall promptly file with the
15 Court a statement to the effect that he is a fiduciary of
16 the Plan with respect to the Plan assets confided to his
17 management.
18

19 As a fiduciary the Investment Manager shall discharge
20 his duties solely in the interest of the participants and
21 beneficiaries with care, skill, prudence and diligence;
22 and consistent with prudent preservation of Plan assets,
23 shall endeavor to invest the Plan's assets in order to
24 bring about a diversification of the Plan's assets, so as
25 to minimize the risk of large losses, as soon as
26 practicable.

27 5. Asset Management Plan.

28 The Investment Manager is to develop an overall plan
29 for the management and/or disposition of the Plan assets
30 confided to his management (hereinafter "management plan"),
31

32 ////

1 which management plan shall be submitted to the Court
2 and to the parties to this stipulation not later than
3 February 15, 1978, or such later time as is mutually
4 agreed upon by the parties to this stipulation. After
5 said management plan is approved by the Court, manage-
6 ment by the Investment Manager shall generally be con-
7 ducted within the management plan without further de-
8 tailed reporting to the Court.

9
10 6. Approval of Asset Management Plan.

11 Within 20 days after service on them of the manage-
12 ment plan referred to in paragraph 5 above, each party
13 to this stipulation shall make, serve, and file any
14 objection he may have thereto. If there are no timely
15 objections, the management plan shall be deemed
16 approved. If there are objections, the parties to
17 this stipulation shall submit objections to the Court
18 for determination upon hearing as the Court may deem
19 appropriate.

20 7. Interim Management.

21 Prior to the approval of the management plan, the In-
22 vestment Manager shall report to the parties to this stipu-
23 lation any proposed action, including the commencement of
24 litigation, which in a single transaction or a series
25 of related transactions will involve Plan assets in an
26 amount exceeding \$100,000, and shall not implement any
27 such action until five days after all parties to this
28 stipulation have received actual notice of such pro-
29 posed action. If within the five days the Investment
30 Manager receives an objection to such action, he shall
31 consider the reasons advanced in support of such objection
32

////

1 and shall notify the objecting party of his decision
2 thereon, and he shall not take the contemplated action
3 until at least 24 hours (or one full business day) after
4 such notice of decision.

5 The parties to this stipulation contemplate that
6 the parties to this litigation and others, including
7 borrowers of Plan assets or their representatives,
8 will promptly bring to the attention of the Investment
9 Manager such matters as they deem to require urgent con-
10 sideration and that the Investment Manager shall review
11 those matters as soon as is reasonably practicable.
12

13 8. Transactions Otherwise Prohibited.

14 Nothing herein shall be construed as authorizing
15 the Manager to take any action prohibited by law.

16 9. Removal or Resignation of Investment Manager.

17 Subject to the following provisions, during the pendency
18 of this litigation, the Plan trustees shall not have the
19 power by their own action to remove, with or without cause,
20 the Investment Manager appointed under the terms of this
21 stipulation. The Investment Manager may be removed only
22 for cause by agreement of all the parties to this stipula-
23 tion, or by the Court on noticed motion of any of the
24 parties to this stipulation.
25

26 The Investment Manager shall have the right to resign
27 from his position as such at any time upon delivering to the
28 parties to this stipulation the written notice of such re-
29 signation to take effect not less than sixty days after
30 delivery thereof, unless each of the parties to this stipu-
31 lation shall accept as adequate a shorter notice. Upon
32

////

1 such resignation of the Investment Manager hereunder,
2 the parties to this stipulation, as a group, shall agree
3 upon and appoint a successor investment manager, and in
4 the event of the failure of the parties unanimously to
5 agree to the appointment of a new investment manager,
6 within sixty days after the date of such notice of
7 resignation, then any party hereto may apply to the
8 Court on noticed motion for the appointment of a
9 successor investment manager.

10 Upon the resignation or removal of the Investment
11 Manager hereunder and the appointment of a successor in-
12 vestment manager, as hereinabove provided, and the receipt
13 of written notice by the Investment Manager from said
14 successor investment manager that it has accepted such
15 appointment, and upon settlement of the Investment Man-
16 ager's accounts by agreement with all of the parties to
17 this stipulation and the payment to the Investment Man-
18 ager of all its fees and expenses then due and owing,
19 Investment Manager shall transfer and deliver to said
20 successor investment manager all of its files, books, re-
21 cords, and reports relating to the assets confided to
22 its management hereunder; and thereupon the Investment
23 Manager herein named shall be released and discharged from
24 all obligations and liabilities accruing after the date
25 of its removal and delivery of documents, and the said
26 successor investment manager so appointed shall succeed
27 to and be vested with all powers, rights, discretions,
28 obligations, and immunities invested in and conferred
29 upon the Investment Manager herein named.

30 The right of the parties to change the Investment
31
32

////

1 Manager hereunder, as hereinabove provided, shall be a
2 continuing right and shall apply to any successor invest-
3 ment manager so appointed.

4 This stipulation shall remain in effect during the
5 pendency of this litigation, provided, however, that the
6 parties do not waive their respective rights to apply
7 to the Court for additional or other equitable relief,
8 on a showing of change in circumstances or good cause
9 and as justice may require.

10 10. Effect of Stipulation.

11 The parties to this stipulation agree that the ap-
12 pointment of the Investment Manager and adoption of a final
13 management plan contemplated by the terms of this stipulation
14 shall dispose of the Secretary of Labor's Motion for
15 Preliminary Injunction. The Secretary shall seek no other
16 preliminary relief pursuant to his motion, provided that
17 the events and procedures contemplated in this stipula-
18 tion are carried out. In the event of any determination
19 of objections with respect to the approval of an asset
20 management plan, as described in paragraph 6 above, the
21 Court's order implementing or denying implementation of
22 the proposed management plan shall be an order governed
23 by the provisions of 28 U.S.C. §1292(a). This stipula-
24 tion shall not constitute a final compromise, settlement,
25 or adjudication by consent of the ultimate issues in this
26 litigation, nor shall it be construed as an admission by
27 any party as to any issues raised in the instant action.
28 The parties expressly reserve all claims and defenses
29 stated in the pleadings.

30
31 ////

32 ////

11. Execution of Stipulation by Others.

The parties recognize that at some future time the Plan, which is an involuntary plaintiff in this action, may desire to have this stipulation executed by its counsel and therefore to become a party to this stipulation. The parties to this stipulation expressly agree that if and when the Plan determines that its counsel should so execute this stipulation, such counsel shall be allowed to do so and the Plan may thereafter be regarded for all purposes as a party to this stipulation.

DATED: August 22, , 1977.

RAY MARSHALL, Secretary of Labor

BY David W. Allen

DATED: August 24 , 1977.

BEN SCHNOUTEY

BY Thomas L. Pursel
Thomas L. Pursel
of PURSEL & PURSEL, LTD.

DATED: August 29 , 1977.

JACK STAFFORD

BY Ralph L. Denton
Ralph L. Denton

DATED: August 23 , 1977.

CHARLES P. CRANE, JR. and
CHARLES R. ADRISSON

BY William Singleton
William Singleton
of BECKLEY, SINGLETON, DELANOY
& JEHISON

IT IS SO ORDERED

DATED: August 30 1977

[Signature]
DISTRICT JUDGE

LABOR MANAGEMENT SERVICES ADMINISTRATION

WASHINGTON, D.C. 20210

24 June 1977

Thomas F. Kane, Chief
Division of Reporting Enforcement

Southern Nevada Culinary Workers and
Bartenders Pension Trust Fund
Las Vegas, Nevada
Case No. 72-6118

Edward F. Daly, Director
Office of Enforcement

*Callagher
Committee
Document
4-6*



The U. S. Department of Justice requested a meeting be held in Las Vegas on June 20, 1977 in order to coordinate the U.S. Government investigations into the Subject Fund.

The following persons attended this meeting:

AUSA William Turner, Las Vegas U.S. Attorney's Office
Dave Slattery, Government Regulations and Labor Section,
U. S. Department of Justice
Dave Allen, Office of the Solicitor, Washington, D.C.
Sam Clark, Compliance Officer, Los Angeles Area Office
Tom Kane, Office of Enforcement, FWPB

The Department of Justice personnel desired to be apprised of DOL's investigation to date, and what its investigation uncovered. SOL Attorney Dave Allen presented an encapsulated discussion of the DOL investigation which centered on fiduciary breaches, prohibited transactions, and bonding violations. It was further related that DOL would be taking three depositions within the next two weeks - Stanley Franklin, Ken Urruh, and Andrew Stevens. These persons were issued Subpena Duces Tecum in connection with DOL's civil litigation.

Dave Slattery stated that the Justice investigations would be centered on criminal violations uncovered by DOL as well as their initial complaint. DOL stated that it had not evaluated its investigation concerning criminal potentials since DOL has not completed its investigation into all the aspects of this case.

Discussion was then centered on the alleged fraudulent Mexican land sales of Murrieta Hot Springs. DOL advised that our knowledge of this matter is contained in the Wolf Schanda memorandum dated November 9, 1976. This memorandum, plus attachments, was previously forwarded to Dave Slattery. DOL further stated that information received from a printout of Murrieta Hot Springs land sales maintained by Information Management International, Inc. (IMI), discloses that the Culinary Pension Fund has a 100% delinquency on this mortgage paper which totals over \$2.4 million.

*Noted
AS 6/24*

Dave Slattery and Bill Turner both agreed after this discussion that it would be necessary to subpoena the books and records of Murrieta Hot Springs in order to ascertain the names of these land contracts. Justice would then conduct interviews concerning these Murrieta Hot Springs sales contracts. Justice was interested in this matter as a possible Mail Fraud violation.

Dave Slattery also stated that he was interested in the possible criminal implications of Charles E. "Red" Swift, who owned the Swift Construction Company, was an official of the Gardnerville Ranchos Improvement District (GRID), and possibly owned an interest in Environmental Communities, Inc. (ECI). ECI is alleged to have received GRID bond money, which was raised for land improvements, for services which ECI did not perform. Swift allegedly approved the ECI "draws" without verification of the work. ECI later went into bankruptcy. Justice stated it would be necessary to subpoena GRID books and records to verify this information.

It was agreed that, at this time, these were the only possible criminal violations uncovered by DOL. There were other questionable practices noted in the books and records examined by DOL, but DOL was not in a position to make a judgment on these practices at this time. Additional investigation was necessary to reach a decision on these matters.

A discussion ensued concerning the Los Angeles Strike Force and its authority to investigate the Culinary Fund's activities. Dave Slattery stated that he spoke to Michael A. DeFeo, Attorney in Charge of Organized Crime and Racketeering Section, Los Angeles Strike Force, and he was advised that the Strike Force would hold the issuance of subpoenas in abeyance and would later discuss its investigative plans with Slattery. AUSA Turner also stated that he and Slattery would discuss his plan concerning this investigation.

Since the U.S. Attorney in Las Vegas and the Strike Force in Los Angeles would be presenting certain matters to Federal Grand Juries concerning their investigation into possible criminal violations, the writer suggested that he and Dave Slattery coordinate the Justice and DOL investigations so that there would not be any possible problems or impediments in the investigations being conducted by these agencies.

The meeting was adjourned at 5:45 p.m.

In view of this two-pronged investigation by the Department of Justice - one in Las Vegas and one in Los Angeles - the writer recommends that DOL proceed with its investigation to gather the necessary evidence to substantiate the ERISA violations only. Upon completion of the civil litigation, DOL should then provide all pertinent information to the Department of Justice for their information and investigation of possible criminal matters.

22 FEB 1978

Callagher Document #4-0

Edward F. Daly, Director
Office of Enforcement

Visit to LAAO
February 16, 1978

J. Vernon Ballard
Deputy Administrator

I addressed the Track and covered such matters as the Manual, Compliance Enforcement Strategy Document, criminal versus civil, etc. The only question that was asked was whether the Compliance Enforcement Strategy Document had been cleared with the union prior to its release.

A serious problem at the LA office is the lack of continuity in personnel. For example, the Track presently has 11 professionals plus 3 vacancies. The most experienced compliance officer at the Track is Mimi Logan who has been with the Track since mid 1975. She is about to leave to join the LMSA Track. Wally Panel (EOD September 1975) and Lee Ende (EOD December 1975) are next in line so far as seniority is concerned. The next employee in the seniority line is Dennis Quigley who joined the Track in August 1976. In brief, the Track lacks experience. This puts added pressure on the Track Supervisor. There is also a question as to whether the employees are being trained in FWBP only to transfer out. If so, in the interest of economy and efficiency, LMSA managers may wish to take a hard look at the transfer policy. I don't know whether the personnel situation in LA is unique for that office but Field Operations might want to conduct a review to see whether this situation is duplicated in other AOs and take appropriate action.

Cavagole

The LAAO Track Supervisor said that in connection with the Southern Nevada Culinary Workers investigation Dave Allen, at the outset, said that he was in charge of the case. I don't know what is meant by this reported remark but this is the type of language that can put the SOL and LMSA field personnel on a collision course. The LMSA field supervisors are not about to abandon control of personnel to the Solicitor's Office. This may require some clarification with the Solicitor's Office.

LMSA:FWBP:EDaly:fa:2--21-78

113 West New York Avenue • P.O. Box 15107
Las Vegas, Nevada 89114
(702) 382-4260

October 20, 1975

Kane document
#2

Board of Trustees
Southern Nevada Culinary
and Bartenders Pension Fund

Re: Sierra Charter Corporation of Nevada and Charter Properties
Corporation Combined Financial Statements for the period ended
April 30, 1975

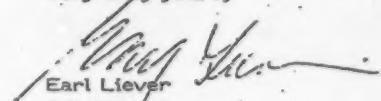
Gentlemen:

I am enclosing a resume of some of the high spots of the Financial Statements of Sierra Charter et al. which my staff and I worked out for your perusal.

I think it is very important for you Trustees to read our analysis of the statement, and I also think this statement should be made part of the Minutes of the Fund. As I see it, our job is to report to you Trustees for any action that you desire to make, and we will be happy to carry out any instructions.

Trusting that you will find this very informative, I am

Very truly yours,


Earl Liever
Administrator

EL:ns
Enclosures

statements were sent to each trustee, Mr. Roland Davis, Mr. I. R. Ashleman, II, and Mr. Merlin Jones.

In our examination of the financial statements we observed a number of items that we felt were of great significance. These items are discussed in the following paragraphs.

Morris Shenker and his family are the sole shareholders of Sierra Charter Corporation of Nevada and Charter Properties Corporation, hereafter treated as one entity and identified as "Sierra". In addition to Sierra, Mr. Shenker and his family own all the shares of Murrieta Hot Springs, Charter Home Builders, and IJK Corporation, which in turn owns 38% interest in Continental Connector Corporations.

Sierra has advanced to these companies a sum of \$2,682,891; \$1,800,000 to Murrieta Hot Springs, \$116,696 to Charter Home Builders, and \$766,195 to IJK Corporation. The collectability of these receivables is questionable as they are dependent upon future events which are not determinable.

In addition to these loans, Sierra has advanced substantial sums to other related parties, namely: 1) \$108,000 to John Pilkington, Attorney, advanced on August 1, 1975; 2) \$796,872 to Mr. Sidney Wyman, a business associate of Mr. Shenker. There has not been a note executed for this advance; 3) \$59,441 to Sports Arenas for insurance premiums, Mr. Shenker is the controlling stockholder; 4) \$111,400 to Mr. Stan Franklin, President of Sierra; and 5) \$121,476 for an option to purchase 564 acres near Lake Tahoe that is owned by Stan Franklin. The collectability of the loans to Sidney Wyman and Stan Franklin are questionable.

The advances made by Sierra to all affiliated and related parties totals \$3,836,580. Of this amount, \$3,591,163 is of a questionable nature

come cannot be determined at the present time.

In addition to these above transactions there was a note on a rather involved transaction with Mr. Stan Franklin, Security National Bank of Nevada, and Swift Construction, Inc., a related entity though the relationship was not identified. In the transaction Mr. Stan Franklin borrowed \$300,000 from Security and then lent \$300,000 to Sierra. Sierra in turn bought \$300,000 worth of participation in a \$1,000,000 note issued by Swift and being held by Security. On the financial statements the loan from Mr. Stan Franklin had been netted against the participation in the Swift note so that neither transaction was reflected in the statements.

According to one note to the financial statement, subsequent to the April 30, 1975 statement date, Sierra borrowed \$175,000 from S & F Corporation, owned 100% by Mr. Morris Shenker, at 10% interest payable on demand. Sierra, as of September 5, 1975, did not have the means with which to repay this advance.

Sierra was showing \$401,617 estimated cost to complete improvements. According to the note, this was only the cost on the lots that had been sold as of April 30, 1975. In addition to these improvement costs there was an encumbrance on the unsold lots of \$4,783,378 payable to Gardnerville Ranchos Improvement District. This encumbrance represents a senior lien on the lots.

The financial statements indicate that as of April 30, 1975 Sierra had receivables from land contracts and trust deed notes of \$3,565,912. The statements, however, did not disclose if these receivables were assigned to the various lenders as security for their loans. According to the notes to financial statements, as of April 30, 1975, Sierra had \$3,134,975 of loans secured by land contracts and deeds of trust not counting the ones assigned to the Pension Trust. According to the April 30, 1975 computer printout the

trust assigned.

As of April 30, 1975, Sierra had \$4,078,732 worth of notes payable in addition to the \$7,050,000 payable to the Pension Trust. Of the \$4,078,738, \$2,613,776 was at a 12% interest rate and Sierra was delinquent \$45,210 of principal not taking into account interest.

The liabilities show \$796,036 of accrued liabilities as of April 30, 1975. This figure probably is made up mainly of accrued interest as the interest due the Pension Trust as of April 30, 1975 was \$341,226.97.

Sierra along with Mr. Morris Shenker and Mr. Stan Franklin guaranteed \$3,800,000 of performance bonds issued by Argonaut Insurance Company for a contractor who defaulted. Sierra as guarantor may experience a loss, but no provisions were made in the financial statements for the loss. It was not disclosed what project the defaulted contractor was working on and if it related to Sierra's operations.

HUD ordered Sierra's suspension of sales on July 7, 1975. Sierra was not able to resume in its sales activities until October 1, 1975 when they received clearance from HUD.

Sierra expended \$962,074 for general and administrative expenses other than salaries to offices and key employees, interest, and commissions and other selling expenses. This amount represents 44% of the total cash expenditures. There was no supporting schedule indicating what types of expenditures made up these expenses.

In summary, Sierra's financial situation is not very bright. They have advanced substantial sums to related parties of which the collectability is questionable. Most of the receivables are assigned as security, maybe even more than the value of the receivables. They owe substantial amounts

As Mr. Christopher H. Bennett, Chairman of the Board, stated in the Notes to Combined Financial Statements For The Year Ended April 30, 1975, note 9, "The future of Sierra is dependent upon its ability to obtain additional financing as substantial expenditures will be required to continue operations."

SOUTHERN NEVADA CULINARY & BARTENDERS PENSION TRUST
RECAP OF KNOWN OUTSTANDING OBLIGATIONS
RECEIVABLES FROM MURRIETA & SIERRA

<u>Murrieta Hot Springs</u>			
Loan - March 23, 1973	\$2,000,000		
Loan - July 30, 1973	<u>5,000,000</u>		
Total Loans		\$7,000,000	
Interest earned but unpaid:			
C/Y 1975	423,623.89		
C/Y 1976	<u>616,990.92</u>		
Total Unpaid Interest			
Added to principal		<u>1,040,614.81</u>	
Total Murrieta Obligation 12/31/76			\$8,040,614.81
<u>Sierra Charter Corp.</u>			
Loan - June 7, 1974	7,450,000.		
Loan - July 1975	1,350,000.		
Advance - December 1975	60,000		
Advance during C/Y 1976	7,300,000		
Advance - Jan. 1977	800,000		
Advance - Feb. 1977	<u>500,000</u>		
Total Loan&Adv. at 2/28/77		17,460,000.	
Interest earned but unpaid:			
C/Y 1975	408,891.41		
C/Y 1976	<u>1,350,137.16</u>		
Total Unpaid Interest			
Added to Principal		<u>1,759,028.57</u>	
Total Sierra Obligations as per books - 2/28/77			<u>19,219,028.57</u>
Total Murrieta & Sierra Obligations as per books			27,259,643.38
Add:			
Unpaid interest-approx. (Jan & Feb 1977)		450,161	
Warehouse draw at Nevada State Bank (note executed not due for 3 years - 1979)		2,240,000	
Letters of Credit-Irrevocable:			
#197519-Continental Telephone	224,953		
#197520-Continental Telephone	270,275		
#339-Argonaut Ins. Co.	<u>1,100,000</u>	<u>1,595,228</u>	
Other obligations not on books -			
Total			<u>4,285,389</u>
Total Outstanding Obligations at 2/28/77 (known)			<u>\$31,545,032.38</u>

EXHIBIT A

Memorandum of Understanding Between the
Departments of Justice and Labor Relating
to the Investigation and Prosecution of
Crimes and Related Matters under Title I of the
Employee Retirement Income Security Act of 1974

Kine Document
8

Whereas Title I of the Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829, 29 U.S.C. 1001, hereinafter referred to as "the Act") imposes certain duties and responsibilities upon the Attorney General and the Secretary of Labor with regard to prosecution of crimes and related matters arising under the Act; and

Whereas, section 504 of the Act imposes upon the Secretary of Labor the responsibility for conducting investigations of persons who have violated or are about to violate any provision of Title I of the Act or any regulation issued thereunder; and

Whereas, section 506 of the Act provides that the Secretary of Labor may make interagency agreements to avoid unnecessary expense and duplication of functions among Government agencies and ensure cooperation and mutual assistance in the performance of his functions under the Act; and

Whereas, section 506 of the Act provides that the Attorney General or his representative shall receive from the Secretary of Labor for appropriate action such information developed in the performance of the Secretary's

functions under Title I of the Act as may be found to warrant consideration for criminal prosecution; and

Whereas, it is desirable and essential that the areas of responsibility and the procedure to be used in investigations and prosecutions of offenses arising under the Act should be the subject of a formal agreement between the Departments;

It is hereby agreed and understood between the Department of Justice and the Department of Labor as follows:

I. Criminal Prosecution.

All cases involving violation of criminal provisions of the Act will be prosecuted by the Department of Justice. Those cases investigated by the Department of Labor which may warrant criminal prosecution will be referred to the Management and Labor Section, Criminal Division, Department of Justice.

II. Investigations of Matters made Criminal by the Act.

Subject to specific arrangements agreed upon by the two Departments on a case-by-case basis, investigations of criminal matters under the Act will be conducted as follows:

(a) The Department of Justice will investigate all matters arising under 18 U.S.C. 664 (theft or embezzlement from employee benefit plan), 1027 (false statements

and concealment of facts in relation to documents required by the Act) and 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan).

(b) The Secretary of Labor will either on complaint of a violation or on his own motion investigate through his own staff all matters that may form the basis for possible criminal action under section 501 of the Act. These matters include reporting and disclosure provisions under Part 1 of Title I of the Act and any regulations issued thereunder.

(c) The Department of Justice will under delegation from the Secretary of Labor investigate those criminal matters arising under:

(1) Section 411 of the Act (prohibition against certain persons being a consultant to, employed by, or holding office in an employee benefit plan and against allowing such persons to act as a consultant to, be employed by or hold office in an employee benefit plan).

(2) Section 511 of the Act (interference with the rights of a participant or beneficiary by fraud or coercion).

III. Parole Board Proceedings.

The investigation and presentation of issues concerning the appropriateness of a grant of a certificate under Section 411(a) of the Act to a person by the Board of

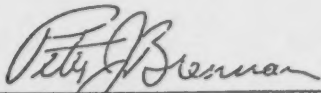
Parole of the Department of Justice will be the responsibility of the Department of Labor, including appearances before the Board of Parole.

IV. Instructions.

So that the terms of this Memorandum of Understanding will be effectively performed, both Departments will issue instructions for the guidance of their officers and employees in the matters referred to in the preceding paragraphs, such instructions to be submitted for comment to the other Department prior to their issuance.

V. Adjustments.

Periodic reviews of this agreement will be made to determine whether any adjustments are desirable in light of experience under the Act.


Secretary of Labor

FEB 5 1975


Attorney General
acting

Feb. 8, 1975

Backlog Document # 11

April 3, 1981

MEMORANDUM FOR THE FILE

FROM: WILLIE ALEXANDER 
Attorney, PBSO

SUBJECT: Fourco Glass Company
Pension Plan for United Glass
and Ceramic Workers
Case No. 21-5591(48)

As per our memorandum, dated April 1, 1981, the above referenced matter is closed.

Approved NSO 4/11/81

*Backlog Document**11-A*

1 APR 1981

MEMORANDUM FOR: ALAN LEBOWITZ
Acting Assistant Administrator, OE

FROM: NORMAN P. GOLDBERG
Counsel for Litigation, PBSO

SUBJECT: Fourco Glass Company,
Pension Plan for United Glass
and Ceramic Workers
Case No. 21-5591(48)

After careful consideration of additional information relevant to the above referenced matter and lengthy discussions with the Administrator, staff of EDA and opposing counsel, the Department has determined not to pursue litigation of this matter. Accordingly, we recommend that no further action be taken.

SOL:ALEXANDER:dc:3-26-81

BCC: Master
Chron.
Monica
Norman
Willie
Lit.

tw

2 FEB 1977

Edward F. Daly, Assistant Director
Division of Enforcement

Southern Nevada Culinary and Bartenders
Pension Trust Fund
Las Vegas, Nevada
Case No. 72-6118

To: J. Vernon Ballard
Acting Administrator, FWBP

Kane
Slattery
Committee
Document
#3

On February 1, 1977, Tom Kane of my staff discussed the impending investigation of the above-captioned subject with Attorney Dave Slattery, Government Regulations and Labor Section, Department of Justice. Dave Slattery advised that the Department of Justice would not have any objections to FWBP conducting an investigation into the captioned fund. Slattery was further advised that FWBP is mainly interested in obtaining certain documents from the trust fund which would form our basis for obtaining an injunction against the fund disbursing any further loan money to Morris Shanker.

Dave Slattery further stated that LMSE was investigating loans from the HREU International and our investigations may coincide at a later date. Kane advised Slattery that our main object now is an audit of the fund's books and records. FWBP would not conduct any interviews or other investigative leads without clearing our investigative plan with Justice.

Slattery advised that the above plan would in no way hamper LMSE's investigation. Slattery did state that Al Bramlet may resist making the fund's books and records available to FWBP because he is involved in the LMSE investigation.

Slattery stated that the latest 10-K filing of Continental Connector with the SEC may be information that FWBP could use in this matter. These 10-K filings disclosed the financial operations of Marietta. Slattery stated that Larry Lippe has a copy of these SEC filings.

cc-Dave Allen (SOL)
Enforcement
Kane
Chron

Addendum: Slattery called Daly on February 2 and reiterated that he has no objection to our investigating the fund; that D/J does not want us to conduct follow up interviews at the International Union or to conduct any investigation at the International Union. He would like us to avoid any investigation relating to the \$70000 loan from the subject fund to the Dutch Inns, Coral Gables, Florida, referred to in my memo to you dated February 1. I told him that we would coordinate everything with him before we took any investigative action; that I would advise him before any DOJ people went to the fund, etc.

FWBP:EDaly:fa:2-2-77

SEARCHED	INDEXED	SERIALIZED

FWBP:TFKane/dkt 2/2/77

Edward F. Daly, Assistant Director
Division of Enforcement

Southern Nevada Culinary Workers and Bartenders
Pension Trust (EIN 88-6016617)
Las Vegas, Nevada
Case No. 72-6118

To: J. Vernon Ballard
Acting Administrator, FWBP

83

*Committee
Document
#5*

3/14/77

On March 7, 1977, an audit of the books and records of the captioned Fund was commenced by FWBP personnel. This is an interim memorandum as to what the audit has uncovered to date and a request for action by FWBP.

After one week of review of these books and records, it is the consensus of the assigned FWBP personnel that this Fund was being manipulated for the benefit of Sierra Charter Corporation of Nevada (Sierra) and Morris Shanker (Shanker) and not for the benefit of the participants and beneficiaries.

The total loan commitments to Murrieta Hot Springs (Murrieta) and Sierra as at December 31, 1976, was \$25.9 million, of which \$2.79 million was in unpaid interest. During January and February 1977, there were additional "advances" of \$1.3 million plus additional unpaid interest of approximately \$450,000.

The FWBP audit also ascertained certain commitments that were not disclosed on the books as liabilities, even though they are contingent liabilities. These contingent liabilities total \$3.8 million.

Therefore, the total known outstanding obligations of the Fund to Shanker operations at February 28, 1977, is approximately \$31.5 million. See attached Exhibit A.

In the Second Addendum to the loan agreement of June 17, 1974, and the First Addendum and Modification of July 28, 1975, there is contained on page 8 as item (10) which states that the lender (the Fund) acknowledges that Sierra has certain contingent obligations, the amounts of which are not presently known, but these obligations will be paid by advances from the Fund. Murrieta has the following pending law suits which total \$94,050:

1. A&L Asphalt, Inc. v/s Murrieta Hot Springs (\$7,000)
2. Credit Managers Association v/s Murrieta Hot Springs (\$26,000)
3. Magridichian v/s Murrieta Hot Springs (\$10,000)
4. Shay Electric Co. v/s Murrieta Hot Springs (\$7,500)
5. Yablon v/s Murrieta Hot Springs (\$2,750)
6. Talantograph Corporation v/s Murrieta Hot Springs (\$5,800)
7. Fair, et al., v. Murrieta Hot Springs (\$35,000)

BUREAU SERIAL NO.	INITIALS	DATE
826	B	3/14/77

From the review of the Fund's records it appears that there is a "milking operation" of the advances to Sierra by Shanker in that this money is being siphoned off to other Shanker operations.

The money being advanced to Sierra by the Fund is to finance the sales and marketing of the Murrieta property. Some of this money was used to:

- Fraud
1. Buy a building in Los Vegas for the Sierra operations.
 2. Settle a defaulted loan of Stan Franklin, President of Sierra, against the Moapa Indians in the amount of \$300,000.
 3. Acquisition of new land by Sierra - the Salla Sea property.
 4. Advance \$796,872 to Sidney Wyman, a business associate of Shanker.
 5. Advance \$121,476 for an option to purchase 564 acres of land near Lake Tahoe that is owned by Stan Franklin.
 6. HUD ordered suspension of sales by Sierra on July 7, 1975 until October 1, 1975. During this period of time, Sierra received \$2.2 million in "advances" for sales promotion work that was suspended by HUD.

These are a few of the major misuse of Sierra advances by the Fund. Attached is a letter dated October 20, 1975 to the Fund's Trustees from Earl Liever, paid Administrator for the Fund, which contains questionable uses of the Fund money.

Murrieta transferred title to 826 acres of its land to the Pipefitters Local 562 Welfare and Pension Funds in consideration of a \$11.5 million reduction of its indebtedness to the Pipefitters. Murrieta's cost basis of the property was \$3.6 million, which included a \$1.6 million profit to an affiliate.

Sierra now desires to transfer land to the captioned Fund in consideration of its indebtedness to the Fund. From the history of the Pipefitters Fund settlement it is believed that the captioned Fund will not receive an equitable settlement but will receive this same type of settlement as the Pipefitters.

It is recommended that you instruct the SOL to obtain an injunction to halt the payments of \$400,000 to \$800,000 a month to Sierra from the Fund. This is of the essence because of the size of the monthly payments being distributed to Sierra by the Fund. It should be noted that Attorney Dave Allen, SOL, has been apprised of this matter and also believes that legal action is necessary.

Enclosures

cc-Dave Allen, SOL
Enforcement, Chron, Kane

FWD:TFKane/dkt 3/16/77

U.S. DEPARTMENT OF LABOR
 LABOR MANAGEMENT SERVICES ADMINISTRATION
 Administration of Pension and Welfare Benefit Programs
 Washington, D.C. 20216

March 16, 1977



Ballard

*Committee
 Document
 #6*

FILE

MEMORANDUM FOR THE UNDER SECRETARY

FROM: J. Vernon Ballard
 Acting Administrator

SUBJECT: Southern Nevada Culinary and Bartenders
 Pension Trust Fund
 Las Vegas, Nevada
 (EIN 88-6016617) Case No. 72-6118

On March 7, 1977 we briefed you on loans from subject fund to Morris Shenker, a St. Louis attorney who was closely associated with Jimmy Hoffa (see attached copy of my March 7 memorandum). We currently are conducting a financial audit of the Fund and are convinced that Shenker related entities are milking the Fund. Total assets of the Fund are approximately \$37 million, of which \$31 million is loaned to Shenker entities. Fund assets are being loaned to Shenker in amounts of \$400,000 to \$800,000 monthly.

While our financial audit is continuing, on March 14, 1977, I recommended to the Associate Solicitor that immediate action be taken to correct the existing abuses and, in effect, to prohibit further loans. Shenker is attempting to settle loans from the Fund by turning over land of questionable value. This is similar to what he did to settle loans from Local 562, Pipefitters Fund, St. Louis, Mo., when he settled an \$11.5 million loan with land of a cost value to him of \$2 million.

In view of the favorable publicity surrounding DOL's action in the Central States Teamsters agreement, timely follow-up action against the subject fund should be well received by the media.

Attachment

cc: Mr. Paul Jensen
 Mr. Ramon Kelly ✓

7 MAR 1977

MEMORANDUM FOR: Robert J. Brown
Under Secretary

FROM: J. Vernon Ballard
Acting Administrator

SUBJECT: Southern Nevada Culinary and Bartenders
Pension Trust Fund
Las Vegas, Nevada
Case No. 72-5118

Our investigation of this fund resulted from our interest in Morris Shenker, a notorious St. Louis attorney who represented Jimmy Hoffa in his several appeals and who, in the past, has received substantial finder's fees on loans to various entities from the Central States Teamsters Pension Fund.

As of January 1976 Shenker related entities had loans of \$169 million from the Central States Teamsters Pension Fund. In addition, he had loans from Local 567, Pipefitters Pension Fund, St. Louis, and the subject pension fund. As of December 31, 1974, the total assets of the subject pension fund were \$20 million, of which \$16.7 million was loaned to Shenker entities. In December 1976 we learned that the subject pension fund committed another \$16.6 million to Shenker over the three year period September 30, 1975 through September 30, 1978. Of this \$16.6 million, \$8.4 million was going to commissions and selling expenses plus \$1.8 million was going to general administrative expenses.

In December 1976 the factual situation was called to the attention of the Solicitor so that injunctive relief might be sought to prevent the plan from loaning further funds to Shenker. Because this information was unconfirmed, the Solicitor wanted documentation. After the fund agreed to make records available voluntarily (rather than under a subpoena), on February 15, 1977, the fund made available to our auditors copies of documents covering all loans to Shenker. These documents were subsequently reproduced and furnished to the Solicitor. A PWP five man audit team begins its audit of the trust fund on March 7, 1977.

cc: Ballard - Infor
Enforcement
Chron

PWP:EDaly:fs:3-4-77

March 23, 1977

Edward C. Kennelly

Committee
Document
#8Justice
Slattery
InjunctionSouthern Nevada Culinary Workers and Bartenders Pension Fund
(LAAO Case 72-61157)Proposed Civil Action. Ray Marshall, Secretary of Labor of the
United States, Plaintiff, and Southern Nevada Culinary and
Bartenders Pension Trust, Involuntary Plaintiff, vs. Ben Schmuttey,
et al., Defendants, USDC, District of NevadaTo: Frank Castaneda
Chief, BFSI

At your request, the writer attended a meeting at 5 p.m. on March 22, 1977, attended by Mr. Ballard and Monica Gallagher, SOL, at which the proposed complaint in the above captioned case was reviewed. The proposed Motion for preliminary injunction, to be supported by an affidavit to be signed by Tom Kane, was still in typing and was not before us. There was considerable discussion as to the effect the suit would have, when filed along with the Motion, upon the ongoing audit being conducted and the relative roles of the SOL and PWP, which I will advise you concerning orally. The decisions taken with regard to the wording of the complaint and the Motion, in brief, were as follows:

1. In numbered paragraph 3 of the relief requested in the complaint, the word "profits" will be changed to "income," Mr. Ballard explaining the nicety of the distinction between the two words and Ms. Gallagher agreeing.
2. In numbered paragraph 6 of the requested relief in the complaint, the words "other than the defendant Association" will be added after the word "interest."
3. Ms. Gallagher stated that the Motion as drafted requested the court to enjoin the trustees to cease any further payouts to Shenker controlled entities and to order the Nevada Masort Association to keep enough trustees in place so that the trust could function.

Mr. Ballard noted that the final paragraph on page 14 of the memorandum from the SOL to him setting out the legal basis for this suit indicated that the Motion for preliminary injunction would seek to "secure the personal assets of the defendants to increase the likelihood of obtaining complete relief." Ms. Gallagher stated that appropriate language would be included in the draft Motion to this effect.

cc: Ballard
Kane
Enforcement

PWP:EKennelly/sa:3-23-77

DATE	INITIALS	DATE

Mr. Ballard noted that the complaint appeared to be very broadly and generally drawn. Ms. Gallagher indicated that this was done intentionally because of our ignorance at this point of all that has gone on and is going on and to leave leeway to move when the Motion and complaint are filed.

Mr. Ballard noted that it might be that we would want to request a "master," or similar type individual, to take over but Ms. Gallagher queried whether or not "suitable successor trustees," requested to be installed in numbered paragraph 6 in the relief sought in the complaint, could not handle this responsibility.

Comment was made of the fact that the attorney for the Fund, Mr. Ashelman, is presently on the Board of one or more Shenker controlled corporations and we do not know at this point whether or not he is there at the request of the trustees to monitor the disposition of the monies paid out by the Fund, or in apparent conflict of interest. We have been informed that the audit to date has not reflected any notation in the minutes of the trustees' meetings that they requested him to represent the Fund on the Boards.

There was discussion whether or not prior to filing of the complaint and the Motion for preliminary injunction, it would be the better part of judgment to make a formal request of the trustees to voluntarily cease and desist any payouts from the Fund on the Shenker loans. Ms. Gallagher noted that such a move would probably be abortive. As noted in the Sacher to Ballard legal memorandum, with each payout ~~the trustees~~ note that it is done upon the advice of counsel that the Fund is ~~legally~~ obligated to fulfill its loan agreements. The consensus was that the present action was the better, even though no one could be sure of what the effect would be upon our audit or what action Shenker, et al., would take so that we could immediately, hopefully, put a stop to the \$500,000-\$800,000 payouts being made each month.

Mr. Ballard noted that the SEC had an interest in some of the elements of this matter and Ms. Gallagher stated that Steve Sacher was aware of this and said, "He would take care of that."

Mr. Ballard inquired whether the SOL knew if the Department of Justice had touched base with regard to the proposed suit with the Strike Force.

Ms. Gallagher stated that she knew Tom Kane had discussed the matter with Dave Slattery but did not know if the Strike Force backup section had been informed but in any event did not think it appropriate that this be done.

It had been intended that the Motion for preliminary injunction and the complaint would be handcarried by Ms. Gallagher, perhaps with Dave Allen of SOL, for filing in Nevada. However, I am now informed that because of some typographical errors in the affidavit to be executed by Tom Kane and for other reasons, that the filing date has been postponed at least until tomorrow, March 24.

Thomas F. Kane, Chief
Division of Reporting Enforcement

Southern Nevada Culinary Workers &
Bartenders Pension Trust Fund
Las Vegas, Nevada
Case 72-6118

To: Edward F. Daly, Director
Office of Enforcement

Revised 6/1/77

Prelim. Injunction
Justice

Committee
Document
#12

This memo will update you concerning the investigation of the Subject Fund.

A hearing on our motion for a Preliminary Injunction was scheduled for May 9, 1977. This hearing was postponed by Judge Foley to May 24, 1977. During the interim period SOL Attorney Dave Allen and the defendants attempted to obtain a Receiver for the Fund.

Apparently since both parties agreed to obtain a Receiver for the fund, Judge Foley removed this matter from his Court Calendar subject to being placed back on his Court Calendar within 10 days notice. SOL and defendants agreed to this action.

To-date both parties have been unable to obtain a Receiver for the Fund.

The writer recently spoke to Attorney Dave Allen and was advised that SOL is proceeding with its case re prohibited transactions, diversifications and possible fiduciary violations. Dave Allen is preparing a list of persons to take their depositions within the next two weeks.

The Compliance Officers in LAAD are in the process of writing an interim ROI. A draft should be completed by June 6th.

The Department of Justice has become deeply involved in this matter since they received an allegation of a \$100,000 kickback to a person associated with the Culinary Fund. The Department of Justice also had received information from a newspaper reporter that involved fraudulent sales of 'Hurriets Hot Springs' land. These matter are to be the bases of a Grand Jury investigation conducted by the USA in Las Vegas.

The writer believes that because of the action by the Department of Justice that SOL has to make a decision as to the role that will be taken by SOL. Should SOL cooperate fully with Justice or proceed alone in its investigation of the Culinary Fund?

The writer believes that DOL should cooperate fully with the Justice Department for the following reasons:

- (1) Both DOL and Justice will be examining the same books and records in many instances and will be duplicating the field work.
- (2) It will insure that DOL will be aware of the Justice findings which may reveal fiduciary breaches and other violations that could be remedied more readily by civil action than criminal action.
- (3) Cooperation will insure that DOL gets credit for the investigation and its results. Whereas non-cooperation will insure that criminal action will take precedent over civil remedies even if civil remedies are the best actions.
- (4) Non-cooperation would necessitate any civil remedies as being held in abeyance by Justice Department until criminal actions are completed which may take years.

cc: SFTD
LAAO
SOL-Dave Allen
Chron.
Enforcement
PWPB:TFFane:glw

10 June 1977

Edward F. Daly, Director
Office of EnforcementSouthern Nevada Culinary Workers &
Bartenders Pension Trust Fund
Las Vegas, Nevada
Case No. 72-6118 → *Pls 1-122**Committee
Document
#13*To: J. Vernon Ballard
Deputy Administrator, FWBP

Re: Office of Enforcement Memorandum dated June 2, 1977

On June 9, 1977, Attorney Dave Slattery, Government Regulations and Labor Section, U.S. Department of Justice, telephonically advised the writer that a meeting has been arranged with AUSA Bill Turner in Las Vegas, Nevada, on June 20, 1977 to discuss the above-captioned investigation. Dave Slattery stated that AUSA Turner is preparing his case for Grand Jury and desired to discuss with DOL their findings in their investigation to date. Dave Slattery stated that our COs from the Los Angeles Area Office are requested to be at this meeting, as well as any other DOL personnel who desire to attend.

It should be noted that the IRS is also requesting information concerning Morris Shanker and desires to discuss the findings of the DOL investigation to date. IRS Agent Dick Carr is handling the income tax investigation of Shanker.

In view of the information set out in the above-referenced June 2, 1977 memorandum, copy attached, your views are requested as to our cooperation in this matter.

Unless advised to the contrary, either the writer or Tom Kane will go to Las Vegas to attend this meeting with CO Sam Clark of the LAAG. CO Gerry Birnbaum, LAAG, will be on vacation at this time. The writer will discuss this matter with Dave Allen, SOL, and ascertain if SOL desires to send a representative to this meeting.

cc-RO-San Francisco
AO-Los Angeles
SOL (Dave Allen)
Enforcement
Choron
Kane

FWBP:TFKane/dkt 6/10/77

BUREAU SYMBOL NO.	INITIALS	DATE
DRE	RL	6/10/77

Enforcement

Thomas F. Kane, Chief
Division of Reporting Enforcement

Southern Nevada Culinary Workers &
Bartenders Pension Trust Fund
Las Vegas, Nevada
Case 72-6118

To: Edward F. Daly, Director
Office of Enforcement

This memo will update you concerning the investigation of the Subject Fund.

A hearing on our motion for a Preliminary Injunction was scheduled for May 9, 1977. This hearing was postponed by Judge Foley to May 24, 1977. During the interim period SOL Attorney Dave Allen and the defendants attempted to obtain a Receiver for the Fund.

Apparently since both parties agreed to obtain a Receiver for the fund, Judge Foley removed this matter from his Court Calendar subject to being placed back on his Court Calendar within 10 days notice. SOL and defendants agreed to this action.

To-date both parties have been unable to obtain a Receiver for the Fund.

The writer recently spoke to Attorney Dave Allen and was advised that SOL is proceeding with its case re prohibited transactions, diversifications and possible fiduciary violations. Dave Allen is preparing a list of persons to take their depositions within the next two weeks.

The Compliance Officers in LAAC are in the process of writing an interim ROI. A draft should be completed by June 6th.

The Department of Justice has become deeply involved in this matter since they received an allegation of a \$100,000 kickback to a person associated with the Culinary Fund. The Department of Justice also had received information from a newspaper reporter that involved fraudulent sales of 'Hurriets Hot Springs' land. These matter are to be the bases of a Grand Jury investigation conducted by the USA in Las Vegas.

The writer believes that because of the action by the Department of Justice that DOJ has to make a decision as to the role that will be taken by DOJ. Should DOJ cooperate fully with Justice or proceed alone in its investigation of the Culinary Fund?

The writer believes that DOL should cooperate fully with the Justice Department for the following reasons:

- (1) Both DOL and Justice will be examining the same books and records in many instances and will be duplicating the field work.
- (2) It will insure that DOL will be aware of the Justice findings which may reveal fiduciary breaches and other violations that could be remedied more readily by civil action than criminal action.
- (3) Cooperation will insure that DOL gets credit for the investigation and its results. Whereas non-cooperation will insure that criminal action will take precedent over civil remedies even if civil remedies are the best actions.
- (4) Non-cooperation would necessitate any civil remedies as being held in abeyance by Justice Department until criminal actions are completed which may take years.

cc: SFRO
LAAG
SOL-Dave Allen
Chron.
Enforcement
FWBP:TFKane:glw

Thomas F. Kane, Chief
Division of Reporting Enforcement

Southern Nevada Culinary Workers &
Bartenders Pension Trust Fund
Las Vegas, Nevada
Case 72-6118

To: Edward F. Daly, Director
Office of Enforcement

This memo will update you concerning the investigation of the Subject Fund.

A hearing on our motion for a Preliminary Injunction was scheduled for May 9, 1977. This hearing was postponed by Judge Foley to May 24, 1977. During the interim period SOL Attorney Dave Allen and the defendants attempted to obtain a Receiver for the Fund.

Apparently since both parties agreed to obtain a Receiver for the fund, Judge Foley removed this matter from his Court Calendar subject to being placed back on his Court Calendar within 10 days notice. SOL and defendants agreed to this action.

To-date both parties have been unable to obtain a Receiver for the Fund.

The writer recently spoke to Attorney Dave Allen and was advised that SOL is proceeding with its case re prohibited transactions, diversifications and possible fiduciary violations. Dave Allen is preparing a list of persons to take their depositions within the next two weeks.

The Compliance Officers in LIAO are in the process of writing an interim ROI. A draft should be completed by June 6th.

The Department of Justice has become deeply involved in this matter since they received an allegation of a \$100,000 kickback to a person associated with the Culinary Fund. The Department of Justice also had received information from a newspaper reporter that involved fraudulent sales of Marrieta Hot Springs' land. These matters are to be the bases of a Grand Jury investigation conducted by the USA in Las Vegas.

The writer believes that because of the action by the Department of Justice that SOL has to make a decision as to the role that will be taken by SOL. Should SOL cooperate fully with Justice or proceed alone in its investigation of the Culinary Fund?

The writer believes that DOL should cooperate fully with the Justice Department for the following reasons:

- (1) Both DOL and Justice will be examining the same books and records in many instances and will be duplicating the field work.
- (2) It will insure that DOL will be aware of the Justice findings which may reveal fiduciary breaches and other violations that could be remedied more readily by civil action than criminal action.
- (3) Cooperation will insure that DOL gets credit for the investigation and its results. Whereas non-cooperation will insure that criminal action will take precedent over civil remedies even if civil remedies are the best actions.
- (4) Non-cooperation would necessitate any civil remedies as being held in abeyance by Justice Department until criminal actions are completed which may take years.

cc: SPRO
 LAAG
 SOL-Dave Allen
 Chron.
 Enforcement ✓
 FWBP:TFKane:g'w

SYMBOL NO.	INITIALS	DATE
DRE	R	6/2/77

LABOR MANAGEMENT SERVICES ADMINISTRATION

WASHINGTON, D.C. 20218

24 June 1977

Thomas F. Kane, Chief
Division of Reporting Enforcement

Southern Nevada Culinary Workers and
Bartenders Pension Trust Fund
Las Vegas, Nevada
Case No. 72-6118

Edward F. Daly, Director
Office of Enforcement

*Committee
Document
#15*



The U. S. Department of Justice requested a meeting be held in Las Vegas on June 20, 1977 in order to coordinate the U.S. Government investigations into the Subject Fund.

The following persons attended this meeting:

AUSA Willis Turner, Las Vegas U.S. Attorney's Office
Dave Slattery, Government Regulations and Labor Section,
U. S. Department of Justice
Dave Allen, Office of the Solicitor, Washington, D.C.
Sam Clark, Compliance Officer, Los Angeles Area Office
Tom Kane, Office of Enforcement, FWPB

The Department of Justice personnel desired to be apprised of DOL's investigation to date, and what its investigation uncovered. SOL Attorney Dave Allen presented an encapsulated discussion of the DOL investigation which centered on fiduciary breaches, prohibited transactions, and bonding violations. It was further related that DOL would be taking three depositions within the next two weeks - Stanley Franklin, Ken Urruh, and Andrew Stevens. These persons were issued Subpoena Duces Tecum in connection with DOL's civil litigation.

Dave Slattery stated that the Justice investigations would be centered on criminal violations uncovered by DOL as well as their initial complaint. DOL stated that it had not evaluated its investigation concerning criminal potentials since DOL has not completed its investigation into all the aspects of this case.

Discussion was then centered on the alleged fraudulent Mexican land sales of Murrieta Hot Springs. DOL advised that our knowledge of this matter is contained in the Wolf Schanda memorandum dated November 9, 1976. This memorandum, plus attachments, was previously forwarded to Dave Slattery. DOL further stated that information received from a printout of Murrieta Hot Springs land sales maintained by Information Management International, Inc. (IMI), discloses that the Culinary Pension Fund has a 100% delinquency on this mortgage paper which totals over \$2.4 million.

*7-11-77
AD 11-4*

Dave Slattery and Bill Turner both agreed after this discussion that it would be necessary to subpoena the books and records of Murrieta Hot Springs in order to ascertain the names of these land contracts. Justice would then conduct interviews concerning these Murrieta Hot Springs sales contracts. Justice was interested in this matter as a possible Mail Fraud violation.

Dave Slattery also stated that he was interested in the possible criminal implications of Charles E. "Red" Swift, who owned the Swift Construction Company, was an official of the Gardnerville Ranchos Improvement District (GRID), and possibly owned an interest in Environmental Communities, Inc. (ECI). ECI is alleged to have received GRID bond money, which was raised for land improvements, for services which ECI did not perform. Swift allegedly approved the ECI "draws" without verification of the work. ECI later went into bankruptcy. Justice stated it would be necessary to subpoena GRID books and records to verify this information.

It was agreed that, at this time, these were the only possible criminal violations uncovered by DOL. There were other questionable practices noted in the books and records examined by DOL, but DOL was not in a position to make a judgment on these practices at this time. Additional investigation was necessary to reach a decision on these matters.

A discussion ensued concerning the Los Angeles Strike Force and its authority to investigate the Culinary Fund's activities. Dave Slattery stated that he spoke to Michael A. DeFeo, Attorney in Charge of Organized Crime and Racketeering Section, Los Angeles Strike Force, and he was advised that the Strike Force would hold the issuance of subpoenas in abeyance and would later discuss its investigative plans with Slattery. AUSA Turner also stated that he and Slattery would discuss his plan concerning this investigation.

Since the U.S. Attorney in Las Vegas and the Strike Force in Los Angeles would be presenting certain matters to Federal Grand Juries concerning their investigation into possible criminal violations, the writer suggested that he and Dave Slattery coordinate the Justice and DOL investigations so that there would not be any possible problems or impediments in the investigations being conducted by these agencies.

The meeting was adjourned at 5:45 p.m.

In view of this two-pronged investigation by the Department of Justice - one in Las Vegas and one in Los Angeles - the writer recommends that DOL proceed with its investigation to gather the necessary evidence to substantiate the ERISA violations only. Upon completion of the civil litigation, DOL should then provide all pertinent information to the Department of Justice for their information and investigation of possible criminal matters.

*Committee
Document
#16*

U.S. DEPARTMENT OF LABOR Office of Labor-Management and Welfare-Pension Reports		REPORT OF INVESTIGATION	FILE NO.: 72-6118
SUBJECT: SOUTHERN NEVADA CULINARY AND BARTENDERS PENSION TRUST FUND AND INSURANCE TRUST FUND OF EMPLOYERS AND UNIONS (EIN #88-6016617) 113 West New York Avenue Las Vegas, Nevada 89114		PROGRAM: 48 Fiduciary	DATE: July 22, 1977
			BY: CO Sam Clark/ CO Gerald Birnha
			ATI: LAAO
			STATUS: INTERIM ACTION

SYNOPSIS:

Investigation predicated on the request of OERS DIVISION OF ENFORCEMENT to determine nature and propriety of loans made by the FUND to MURRIETA HOT SPRINGS (MHS) and SIEF CHARTER CORPORATION OF NEVADA (SIEFRA) both 100% owned or controlled by MORRIS SHENKE (SHENKER). Jurisdiction under Title 1, Section 4(a) of ERISA is established by a collective bargaining agreement between the LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS, CULINARY WORKERS UNION, LOCAL NO. 226 AND BARTENDERS UNION, LOCAL NO. 165 and the NEVADA RESORT ASSOCIATION representing the resort hotels which are engaged in an industry in herently affecting commerce.

PREDICATION

Case was opened on June 17, 1976 at the request of OERS DIVISION OF ENFORCEMENT to determine if the FUND had made loans to entities owned or controlled by SHENKER and, if such loans had taken place, to obtain information as to possible party-in-interest transaction and violations of the prudence and diversification provisions of ERISA. In addition to the writers of this report, the investigation was conducted by the following Division of Reporting Enforcement personnel: Thomas F. Kane, Chief and Richard Williams, Julia Sydnor, Wayne Dillon, and Sara Figueroa, staff accountants.

DISTRIBUTION:				APPROVAL: AREA DIRECTOR
1 - NATIONAL OFFICE w/Exh.				<i>[Signature]</i>
1 - REGION				APPROVAL: REGIONAL DIRECTOR
2 - AO FILE w/Exhs.				<i>[Signature]</i>

This document is the property of the Office of Labor-Management and Welfare-Pension Reports. AUG 1977 JMSA 700 (7/76)
Its contents are not to be disclosed to unauthorized persons.

GPO 597-251

72-6118 (48)

JURISDICTION AND BACKGROUND

FUND PLAN, established as of January 1, 1971 and amended effective January 1, 1976, is a defined benefit plan for the employees covered by the collective bargaining agreement entered into as of March 26, 1976 between THE NEVADA RESORT ASSOCIATION (representing the "strip" resort hotels) and the LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS CULINARY WORKERS UNION, LOCAL NO. 226, and BARTENDERS UNION, LOCAL NO. 165, affiliates of HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO.

The FUND'S administrator is EARL LIEVER, D/B/A WEST COAST ADMINISTRATORS OF NEVADA (ADMINISTRATOR) pursuant to a contract which originally ran from October 1, 1973 through September 30, 1978 but was renewed and extended on July 1, 1975 through September 30, 1983. The contract provides that the administrator "will set-up, furnish, equip, provide and maintain the facilities necessary..." for the operation of the FUND at a fee of 4% per year to be paid monthly based on the previous month's employer contributions.

In addition to the administrator, the FUND'S trustees, 3 union-appointed and 3 management appointed, have employed the following to assist in the operation of the FUND: (1) Barbanell Associates act as consultants on ERISA matters; (2) Davis, Cowell & Bowe as legal counsel along with Ashleman and Sabbath, their Las Vegas Associates; (3) Lavenhol & Horvath as certified public accountants; (4) Martin E. Segal Company as actuary and (5) Scudder, Stevens & Clark, Inc. act as investment counselors.

At the end of the latest reporting year, December 31, 1975, the FUND had total assets in excess of \$29 million and approximately 30 thousand participants of which 650 were retired. For the calendar year 1975 the FUND had \$12.5 million in receipts which consisted of almost \$10.4 million in employer contributions and the balance of \$2.1 million investment income.

The FUND PLAN provides for retirement benefits of \$11.00 per month for credited past service years (maximum of 7 years) and a maximum of \$15.72 per month for future services benefit credits payable at 62 after 10 years of credited service. Participants may elect to take half of the normal benefit in a lump sum, with the remainder paid monthly.

FINANCIAL OPERATION

Although time limitations did not allow for a complete audit, various test-checks of the receipts and disbursements were performed to trace the flow of cash involving contributions from employers, benefit payments to participants, expenses of administration, income from investments and advances to SIERRA, MHS and other SHENKER related entities and individuals. The ADMINISTRATOR does not have a complete set of internal control procedures covering areas of responsibility, work-flow charts and a system of checks and balances in the handling of cash. It was verbally brought to the ADMINISTRATOR'S attention that this was a problem area requiring attention.

72-6118 (48)

ANALYSIS OF the FUND'S books and records discloses two loans to MHS in 1973 totalling \$7 million which, together with interest earned but unpaid as of December 31, 1976, results in a receivable in excess of \$8 million. Analysis further discloses loans beginning June 7, 1974 to SIERRA totalling \$17,930,000 which, together with interest earned but unpaid as of December 31, 1976, results in a receivable \$19,689,000. The total receivable from MHS and SIERRA reflected on the books as of February 28, 1977 is in excess of \$27.7 million. Approximately \$2.6 million of these loans were made directly to SIERRA'S creditors, including \$848,000 to Security National Bank, Reno, Nevada \$785,000 to Valley Bank of Nevada, Las Vegas, Nevada and \$222,000 to Ocean State Bank, Santa Monica, California.

Although the books and records of MHS have not been examined in order to determine the purposes to which the loan proceeds have been put, SIERRA'S books and records were examined. An analysis of receipts and disbursements discloses payments and advances not in keeping with the stated purposes of the December 1, 1975 second addendum to, and modification of, the June 7, 1974 loan agreement. These advances include \$1.1 million to IJK and Continental California, almost \$800 thousand to Sidney Wyman, \$835 thousand to S & F Corp. and Palm Development and \$500 thousand to Environmental Communities, Inc.

At the time the loans to MHS and SIERRA were made, both companies were in serious financial difficulties. Certified financial statements of SIERRA reflect, at April 30, 1974, a deficit of \$2.7 million and, at April 30, 1975, a deficit of \$4 million. Certified financial statements of MHS dated March 31, 1976 reflect, at June 30, 1974, a deficit of \$13.9 million and, at March 31, 1976, a deficit of \$21.2 million.

SHENKER owns or controls SIERRA, MHS, AND I.J.K. NEVADA, INC. (I.J.K.). I.J.K. is a 10% or more shareholder of CONTINENTAL CONNECTOR CORPORATION, whose wholly-owned subsidiary, M & R INVESTMENT COMPANY, INC., operates the DUNES HOTEL and employs persons who are participants in the FUND. Therefore, SHENKER is a party in interest with respect to the FUND.

72-6118 (48)

2. 412(a) - BONDING

A review of the fidelity bond insurance coverage for the FUND discloses the following:

Argonaut Insurance Company provides coverage with Bond No. 135514 and riders 1 through 5 explained below.

Rider #1 extends coverage to directors and trustees while handling funds or other property of the plan. This rider revises the commercial blanket bond to provide coverage as required by ERISA.

Rider #2 extends coverage to the "administrator" effective November 22, 1971, the date of the bond.

Rider #3, effective December 14, 1973, changes the name of the insured to conform with the FUND'S name change.

Rider #4, effective March 6, 1974, increases the limits of liability from \$200,000 to \$500,000, the maximum amount required under ERISA.

Rider #5 provides for three additional years of coverage from November 22, 1974 through November 22, 1977.

As of July 1, 1976, Argonaut Insurance Company was no longer listed by the Department of the Treasury in its Circular 570 entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

DETAILS OF FINANCIAL TRANSACTIONS

The following schedule provides an outline of loans granted by the FUND as well as related indirect and contingent liabilities which have arisen from and/or relate to a creditor and debtor arrangement. Details regarding each category within the outline follow.

LOANS AND RELATED INDIRECT AND CONTINGENT LIABILITIES

I. MURRIETA HOT SPRINGS

a. Loan #1	\$2,000,000	
b. Loan #2	5,000,000	
c. Interest earned, not collected through February 28, 1977	1,169,200	
d. Non-book Real Estate Warehousing Loan at Valley Bank	<u>2,240,000</u>	
		\$10,409,200

II. SIERRA CHARTER CORPORATION

a. Loan	\$7,450,000	
b. Loan - Addendum One	1,350,000	
c. Loan - Addendum Two through February 28, 1977	8,660,000	
d. Interest Earned, not collected through February 28, 1977	2,058,100	
e. Non-book guaranty of unsecured corporate debt at Valley Bank	2,100,000	
f. Irrevocable Letters of Credit	<u>1,595,200</u>	
		\$23,213,300
		<u>\$33,622,500</u>
* Various Additional collateral applicable to I and II.		

III. PAUL R. GOODMAN

a. Participation purchased	\$ 141,200	
		<u>\$ 141,200</u>

IV. DUTCH INNS OF AMERICA

a. Loan	\$ 698,900	
		<u>\$ 698,900</u>

72-6118 (48)

I. MURRIETA HOT SPRINGS

Murrieta Hot Springs valley is a largely arid area located in Riverside, County, California, at the western end of the Santa Rosa Mountains. Its hot springs phenomenon has been pursued as resort-recreational venture for over one hundred years with the latest being the California corporation known as Murrieta Hot Springs (MHS) which is wholly owned by SHENKER. The developer of the resort area immediately prior to SHENKER was Irvin J. Kahan, deceased.

Kahan

- a. On March 23, 1973, the FUND entered into a loan agreement (Exh. 1) of \$2,000,000 with MHS predicated upon real estate lots located in Tracts 4108, 4259, and 4476 at the MHS development as evidenced by a Deed of Trust of record March 26, 1973. A preliminary title policy dated February 22, 1973 on these lots reflects deed of trust liens totaling \$6,500,000 with first position held by the Pipefitters Welfare Educational and Pension Funds (Local Union #562). A final title policy was obtained on March 26, 1973 which reflects the FUND in first position. On December 12, 1974, 26 lots in Tract 4259 were substituted as collateral for reconveyance of 24 lots in Tracts 4259 and 4108. On July 28, 1975, the FUND and MHS executed an addendum and modification of the original loan agreement (Exh. 2). This addendum provided for the guaranty of interest due on the above loan by SIERRA covering a period of two years from date of addendum.

FUND collateral records as of February 28, 1977 reflect only 3 lots remaining unsold; however, sales on 120 lots have been assigned to the FUND represented by sale contracts payable by individuals over a period of up to fifteen years. Face amount of all contracts held is \$2,475,800. A delinquency report of February 28, 1977 shows all contracts as past due with 116 contracts totaling \$2,371,500 delinquent 90 days or more. Also, it was noted that 119 of the contracts originated in Mexico and in the course of this investigation, a report of interview has been submitted by Los Angeles DAA Roger Schlueter which gives rise to the possibility of these contracts being of dubious origin.

- b. On July 30, 1973, the FUND granted a \$5,000,000 loan (Exh. 3) to MHS predicated upon a deed of trust lien covering 550+ acres of raw land in the MHS area bounded in part by State Highway 395 and Murrieta Hot Springs Road. A title policy dated July 31, 1973 reflects no prior liens. This property was purchased by MHS in May of 1971 from J. J. Yoder at a price of \$1,695 per acre, aggregating \$932,250. An appraisal of May 15, 1973 reflects a value of \$7,702,000; however, to achieve this optimum value, improvements estimated at \$7,166,500 would need to be constructed. Additionally, the cost of marketing then improved acreage is estimated at \$6,872,545. Such appraisal assumes the highest and best use of the property with a totally successful sales program.

An inspection of this parcel in May of 1977 revealed a very hilly and arid piece of raw land. A view of the property also indicates that very

72-6118 (48)

little, if any, of the monies borrowed were used to begin accomplishing the improvements necessary to achieve the value placed on the property by the appraiser. In fact, records of the FUND indicate that on August 15, 1973, \$2,250,000 of this loan was assigned to Valley Bank of Nevada for purposes not yet established (Exh. 4).

- c. Interest on both loans (a) and (b) continues to accrue on the books of the FUND and the amount remaining unpaid for calendar year 1975 is \$423,600 and \$617,000 for calendar year 1976. Interest for 1977 through February 28 amounts to \$128,600.
- d. On August 26, 1976, the FUND entered into an agreement with Valley Bank of Nevada for the benefit of MHS (Exh. 5). Valley Bank had previously granted a real estate warehousing line of credit to MHS which amounted to \$1,240,000 as of July 31, 1976. Additionally, Valley Bank had purchased a \$1,000,000 participation in the MHS real estate warehousing line at City National Bank of Los Angeles. Under the new agreement, the Valley Bank line and the City National Bank participation were consolidated into one line of \$2,240,000 at Valley Bank with the bank holding third party real estate purchase contracts on MHS lots as collateral. The bank is further protected by the guaranty of the entire line by the FUND and the FUND has agreed to liquidate the line at the end of the fifth year from above date. Upon liquidation the FUND will receive the third party contracts held by the bank.

In a memorandum prepared by FUND Attorney I. R. Ashelman for the Trustees (Exh. 6), it was indicated that Valley Bank had loaned 100% of the face amount of the third party contracts and, of those contracts held, 64.2% were delinquent. The memo further states that lots underlying delinquent paper were being presold to Mexican customers (refer to loan [a]).

The above agreement is not reflected as a direct, indirect or contingent liability on the books of the FUND.

All of the aforementioned debt with substantial delinquent interest and collateral of questionable value would demand observation of the financial condition of MHS. The latest property statement available was prepared by Arthur Young and Company as of March 31, 1976. The statement reflects total assets of \$25,706,600, debts of \$46,900,900 and a deficit capital position of \$21,194,300. The company reflected an insolvent capital condition on June 30, 1974 which amounted to a deficit \$13,919,900. From June of 1974 until March of 1976 the company sustained a net loss from operations of \$7,161,500. Subsequent to March 31, 1976 the company continued to experience cash flow difficulties and operating losses and in December of 1976, the Spa operations were substantially suspended.

72-6118 (48)

II. SIERRA CHARTER CORPORATION

Sierra Charter Corporation of Nevada (SIERRA) was incorporated in May, 1972 by Stanley I. Franklin who served as president from inception until 1976. Stock ownership at inception consisted primarily of Stanley I. Franklin (40%) and John H. Pilkington (50%) as trustee. In May of 1973, stock ownership amounting to more than 10% was vested only in Stanley I. Franklin and SHENKER. Currently, SHENKER owns 50% and is chairman of the Board, Arthur Shenker 25%, and Patti Shenker Koeln 25%. SIERRA wholly owns Comstock Pipeline, Swift Construction, Charter Home Builders and Sawview Village, Inc. A 50% interest in Carson Valley Country Club is also held.

- a. On June 7, 1974, the FUND entered into a loan agreement with SIERRA in the amount of \$8,000,000 (Exh. 7) of which \$7,450,000 has been advanced. The loan was executed by Stanley I. Franklin as president of SIERRA and is guaranteed by SHENKER. Terms of the loan are payment in five annual instalments commencing five years from the date of the last disbursement. The loan is predicated upon a deed of trust recorded June 12, 1974 which describes real estate lots and land known as Units 6, 7, 8, and 9 at Tahoe-Comstock Development, Douglas County, Nevada.
- b. An addendum to and modification of the loan agreement (2) above was entered into on July 28, 1974 (Exh. 8). Under this addendum an amount of \$1,350,000 was extended to SIERRA. SIERRA agrees to guarantee the interest due, for a period of two years from date of this agreement, on the debt of MHS. Repayment of this sum is to take the form of third party first mortgages or sales agreements for real property. As further security, the collateral margin in the third party first mortgages or sales agreements held by General Electric Credit Corporation will be assigned to the FUND when released. GE holds (55) land contracts on Tahoe-Comstock lots totaling \$2,878,400 of which (68) contracts amounting to \$346,300 are delinquent. An additional provision of this agreement calls for Sierra to provide the Fund with a monthly report of disbursements and uses of the funds.
- c. On December 1, 1975, the original loan agreement and the modification of July, 1975 were further modified by a Second Addendum (Exh. 9). This addendum principally provides for the extension of additional funds on a monthly basis based on SIERRA estimates of cash requirement. SIERRA estimated that \$16,600,000 would be required during the three year period ending September 30, 1978. It was anticipated that these funds would be expended as follows: \$8,400,000 for sales commissions and other selling expense, \$3,100,000 for real property improvements, \$1,800,000 for general and administrative expense, \$2,800,000 for debt service other

2nd
Addendum

72-6118 (48)

than the FUND, and \$500,000 for taxes and assessments on real property. Actual cash disbursements by SIERRA are scheduled elsewhere in this report. SIERRA agreed to memorialize existing loans to affiliates, officers and directors into some recognized form of indebtedness and to pursue collection of these debts. SIERRA further agreed to guarantee all of MIS's debt to the FUND. SHENKER has guaranteed all additional advances to SIERRA in addition to his guaranty of the original loans. As of February 28, 1977, the FUND had disbursed \$8,660,000 under the Second Addendum.

Collateral

The primary collateral for all of the above indebtedness is real estate lots, parcels of land, and third party paper generated by the sale of real estate lots in the development known as Tahoe-Comstock. Tahoe-Comstock is located in northern Nevada, 45 miles from Reno, Nevada, with its closest proximity being at Minden and Gardnerville, Nevada whose population are reported at 400 and 800 respectively. There are four units of development in various stages of completion which are known as Units 1, 2, 6, and 7.

Development of the units within Tahoe-Comstock has been financially augmented by special assessment bonds levied by the Gardnerville Ranchos General Improvement District. These bonds provided funds for construction of improvements. The selling price of each lot includes the pro rata amount of bond assessment which averages approximately \$3,000 per lot. Bonds in principal amounts as follows have been floated against the Units indicated and such amounts constitute a senior lien on the properties:

UNIT NUMBER	BOND FACE AMOUNT
2	\$ 475,000
6	2,030,000
7	3,550,000

The personal guaranties of SHENKER and Stanley I. Franklin are held on the bonds of Units #6 and #7.

As of March 31, 1977, the FUND holds as collateral 256 land contracts on Tahoe-Comstock lots amounting to \$1,509,900. Of these contracts, 45 were delinquent, including five in foreclosure. Delinquencies and foreclosures amount to \$287,600 or 19%. Of the contracts held, 74 are based on lot sales out of Unit 7 of Tahoe-Comstock, with the balance having been generated from sales on Unit 1, 2, and 6.

As of April 15, 1977, the FUND's records in the form of a lot inventory status report reflected the following numbers of lots held as overall collateral:

72-6118 (48)

<u>Unit Number</u>	<u>Total Lots</u>	<u>Unsold</u>	<u>Sold</u>	<u>In Foreclosure</u>
1	2	0	2	0
2	5	1	4	0
6	199	21	172	6
7	996	922	74	0
TOTAL	1202	944	252	6

The asking price of the aggregate of unsold lots is as follows:

	<u>Unsold Lots</u>	<u>Asking Price*</u>
Unit #1	0	0
Unit #2	1	6,050
Unit #6	21	181,900
Unit #7	922	6,405,480
TOTAL	944	\$6,593,430

*Includes special assessment bonds.

Units #1 and #2 provide negligible collateral to the Fund as General Electric Credit Corporation has encumbered most of those lots. The core of the remaining unsold lots is with Unit #7, and the stage of development at which Unit #7 stands is questionable. Reportedly, Environmental Communities Inc. which had contracted to effect improvements funded by the assessment bonds, failed to complete the work, but managed to receive most all of the bond funds before declaring bankruptcy. Sierra has proposed a funding (Exh. 10) to complete construction at Unit #7 and a small part of Unit #6. The amount of budget allocation to complete and market Units #6 and #7 appears to exceed the total retail selling price of all available lots.

As further collateral, the Fund holds deed of trust liens on an additional 545 acres at Tahoe-Constock, which is referred to as Units #8 and #9. This property is raw, unimproved ground assigned a present sale value of \$1,000 per acre by one of the Fund's real estate consultants.

- d: Interest on loans outstanding that has accrued and is unpaid amounts to \$408,900 for calendar year 1975 and \$1,350,100 for calendar year 1976. Accrued and unpaid interest for 1977 as of February 28 totals \$299,100.

72-6118 (48)

e. On May 25, 1976, SIERRA executed an unsecured note for \$2,450,000 in favor of Valley Bank of Nevada. Portions of the proceeds of this note were applied as follows:

1. Payment of SIERRA'S demand notes in favor of Valley Bank of Nevada which amounted to \$1,274,100 and accrued interest on those notes in the amount of \$86,100, for a total of \$1,360,200.
2. Payment of SIERRA'S instalment contracts held by Valley Bank in the amount of \$34,500.
3. Payment of SIERRA'S indebtedness to Century Bank, Los Angeles, California, in the amount of \$66,700.
4. Payment of Stanley I. Franklin's indebtedness to Valley Bank in the amount of \$461,400 which represented a promissory note dated March 25, 1975, in the amount of \$450,000 plus accrued interest of \$11,400. Of the \$450,000 note, only \$400,000 was disbursed with the remaining \$50,000 being held back by the bank as a prepayment of interest. The \$400,000 was largely distributed by Franklin as follows:

<u>Date</u>	<u>Amount</u>	<u>Application</u>
March 26, 1975	\$300,000	Checks issued by Franklin to I.J.K. Nevada, Inc. (Refer to #4 under additional collateral)
March 26, 1975	50,000	Check issued by Franklin to SHENKER
March 26, 1975	26,600	Payment of principal and interest on Franklin's personal note dated February 20, 1975, in favor Valley Bank
April 15, 1975	3,700	Checks issued by Franklin to Sierra
May 2, 1975	12,500	Checks issued by Franklin to himself

5. Payment to Valley Bank of \$524,600 representing principal and interest on a note executed by Environmental Communities, Inc. and Richard Simonian on January 24, 1974 in the original amount of \$550,000. This note was assumed by Charter Home Builders Corporation on February 17, 1975 and security pledged on the loan consisted of 1,250 shares of Carson Valley Country Club, Inc. and 473 shares of Swift Construction Company.

72-6118 (48)

Trustees of the FUND executed the FUND'S guaranty (Exh. 11) of SIERRA'S unsecured note at Valley Bank in the amount of \$2,450,000. This guaranty was noted as being not reflected as a liability on the books of the FUND. Valley Bank released the stock of Carson Valley Country Club and Swift Construction, some vehicles, and in addition, released a parcel of real estate known as the Genoa Peak property. The items released are now considered the FUND'S collateral for its loans and further data concerning this collateral is as follows:

- Call record*
1. Genoa Peak Property: On June 17, 1976 a deed of trust in the amount of \$8,000,000 was recorded in favor of the FUND describing portions of land situated in Douglas, County, Nevada and known as Genoa Peak. The property consists of approximately 465 acres and an appraisal dated July 29, 1974 by William M. White, MAI, reflects a total value of \$465,000. Memoranda from the FUND'S consultant Paul Linden, reflects an estimated total value of \$150,000. It should be noted that the White appraisal describes the property an encircling a mountain top with grades ranging from 20% to 60%. Accessibility is mostly by jeep trail, and for a large part of the year only by snowmobile. There are no utilities available for the property and no land in the vicinity is being developed. The property is zoned to allow only one dwelling per 20 acres and tax records reflect an assessed valuation of \$310 per acre.
 2. Carson Valley Country Club: Attorney for the FUND, I. R. Ashelman, holds stock certificate #23 of Carson Valley Country Club representing 1,250 shares. No stock powers or endorsement of the certificate were noted; however, such stock is represented as the FUND'S collateral. At the time ECI purchased its interest in the Country Club for \$175,000, those fund's were immediately loaned by the Country Club to SIERRA. Said loan was since repaid and ECI'S Country Club stock was obtained by SIERRA through the assumption of the ECI debt at Valley Bank as stated in (3) above. Carson Valley Country Club is located between the East fork of the Carson River and Tahoe-Comstock development. The club facilities consist of an eighteen hole golf course, swimming pool, tennis courts, pro shop, and clubhouse. In February of 1975, total membership was 125; however, a profile of the Club's property at that time by R. Wayne Willey, a project manager for SIERRA, reflects an estimated value of \$1,250,000. This value includes Goodwill at \$139,000 and projects Membership/Dues at \$90,700 annually. The last audited financial statement of April 30, 1976, reflects total assets of \$310,500, debts of \$81,800 and a net worth of \$228,700. The shares considered FUND collateral would have an aggregate book value of \$114,300. The financial statement also reveals operating losses for the year ending April 30, 1975, of \$32,400 and for the year ending April 30, 1976, of \$32,400. Loss for the period from April 30, 1976 to October 31, 1976 is estimated at \$14,900.
- 737*

72-6118 (48)

3. Swift Construction, Inc.: Attorney for the FUND, I. R. Ashelman, holds stock certificate #6 of Swift Construction, Inc. representing 473 shares. No stock powers or endorsement of the certificate was noted, however, these shares are represented as FUND collateral.

Since the financial statement of Swift Construction as of April 30, 1976, reflects an insolvent capital position amounting to \$71,300, the stock held as FUND collateral would find difficulty establishing value. Those assigning values to FUND collateral apparently chose not to elaborate on the worth of the equity stock, but find a 40 acre parcel of real estate at Tahoe-Comstock, one of the assets of Swift Construction, as the means of supporting value. The parcel is regarded as having a collateral value of \$100,000 by Fund Consultant Donald J. O'Leary; however, in arriving at the value no consideration of possible bank lien positions were noted. Swift's books were not available at SIERRA and the current status of the bank loan on the real estate is unknown. It was noted that on April 11, 1977, the management of SIERRA placed what appears to be an arbitrary and highly inflated value of \$800,000 on the 40 acre parcel.

Swift Construction began in 1972 with C. E. Swift, Mike Swift, and Dorothy Swift comprising the officers and directors. In August of 1973, the company acquired the 40 acre parcel of land at Tahoe-Comstock at a cost of \$45,000. Copies of records of Security National Bank of Nevada indicate a \$45,000 loan having been made on this property based on a property appraisal of \$58,000. SIERRA purchased stock in the company in 1973 resulting in ownership resting 75% with SIERRA and 25% with C. E. Swift. In 1974, controlling stock was obtained by Environmental Communities, Inc. by means of a forgiveness of \$257,000 in debts owed by SIERRA and in 1975 control transferred to Charter Home Builders, which according to Franklin occurred to save the stock from the ECI bankruptcy which was filed in March of 1976. In order for Charter Home Builders to obtain the stock, it assumed the approximately \$524,600 of ECI's debt at Valley Bank of Nevada. Stanley I. Franklin, then president of SIERRA initiated the procuring of a \$150,000 loan from Security National Bank of Nevada predicated upon the above 40 acres and the guaranties of SHENKER and C. E. Swift. C. E. Swift appears to have received \$100,000 of these funds in return for his then 20% of Swift Construction. The bank consolidated the \$150,000 note with a balance remaining of \$49,200 on a \$300,000 note to Franklin into a \$200,000 note on August 5, 1976. The guaranties of \$100,000 each from Swift and SHENKER appeared to remain in force; however, on September 2, 1976, after the bank declined to release guaranties until undisclosed water problems on the property were resolved, SHENKER executed an agreement with Swift granting Swift indemnity from his guaranty. The loan consolidation appears to be predicated upon the same 40 acre parcel and lien of record is listed in a preliminary title report of February 14, 1977.

f. Irrevocable Letters of Credit:

1. Irrevocable letter of credit #333 in the amount of \$1,100,000 was issued by Valley Bank of Nevada on August 19, 1975. The letter is in

72-6118 (48)

favor of Argonaut Insurance Company for the purpose of providing a surety bond to Sierra Pacific Power Company in the construction of underground electric lines at Tahoe-Comstock development. The FUND executed a letter of credit in like amount to Valley Bank on August 19, 1975. The purpose of the FUND'S letter was to provide protection to Valley Bank's on its contingent liability. All FUND Trustees signed this letter of credit except Jack Stafford.

2. Irrevocable Letter of Credit #197519 in the amount of \$224,953 was issued by Nevada State Bank on June 29, 1975 in favor of Continental Telephone Company of Nevada, Gardnerville, Nevada. The letter, which expires on July 29, 1985, was for the purpose of providing surety underlying the extension of telephone facilities into the Tahoe-Comstock development. The FUND provided a letter of credit in favor Nevada State Bank on July 29, 1975 in the same amount above. The FUND'S letter was signed by Trustees Al Bramlet and Ben Schmoutey only.
3. Irrevocable Letter of Credit #197520 in the amount of \$270,275 was issued by Nevada State Bank in July 29, 1975 in favor of Continental Telephone Company of Nevada, Gardnerville, Nevada. The letter, which expires July 29, 1985, was written for the account of SIERRA to provide surety in the installation of telephone service at Tahoe-Comstock development. The FUND issued a letter of credit in like amount on July 24, 1975 in favor of the Nevada State Bank. The FUND'S letter was signed by Trustees Bramlet and Schmoutey only.

The above letters of credit constitute contingent liabilities arising from the relationship with SIERRA and are not reflected on the books of the FUND.

*ADDITIONAL COLLATERAL

1. Prosser Property:

The Prosser Lake Heights property, originally consisting of approximately 384 acres, was sold to Stanley I. Franklin on 10-2-72 by Howard Finn. This property is located in Nevada County, California. Pioneer Insurance Company loaned Franklin \$135M allegedly for the purpose of development costs at Prosser Lake Heights, such loan obtained at the time of purchase. At about the same time Franklin borrowed \$300M from the Moape Band of Paiute Indians which was intended for development of property in Oregon (Sal-Lz-Sea), but reportedly was used at Prosser Lake Heights. On 3-13-74 SIERRA agreed to a purchase option of Franklin's for 546 acres of Prosser Lake Heights. On 11-1-74, SIERRA exercised the option and was to acquire Prosser Lake Heights from Franklin; however, although SIERRA bore the expenses and costs of the property, it appears Franklin did not relinquish title.

72-6118 (48)

In February, March, and April of 1976, Franklin gave quitclaim deeds to the FUND covering approximately 80 land locked acres of Lake Prosser property. After an apparent default on the aforementioned note, the Moape Indians agreed to accept a new \$300M note on August 18, 1976, from SIERRA secured by deed of trust notes or third-party agreements for purchase of real property on lots located at Tahoe-Comstock in Nevada and upon which the FUND had prior liens. The FUND released \$430M of such collateral for that purpose.

A preliminary title policy on Prosser dated 4/26/76 reflects the following exceptions: 1. Writ of attachment amounting to \$214,122.46 in favor of McIntire & Quiros, Inc. recorded 6/21/74; 2. A deed of trust dated 12/15/72 in the amount of \$26,250 in favor of David R. Fritschi and Irne L. Fritschi. Notice of Default under this deed of trust filed 1/21/77.

In addition, FUND records reflect another Notice of Default dated 11/8/76 in the amount of \$20,200 under a deed of trust of 10/20/75 in favor of William A. Bellamy which does not appear on the above preliminary title policy.

Other pertinent data affecting the Prosser property is the reported expiration of the tentative map on the tight-lot subdivision reportedly resulting in a substantial diminution in value of the property. Also, Paul Linden, consultant to the FUND, in a memorandum of 3/7/77 reports indebtedness still due the former sellers of this property is approximately \$720M plus interest from 1974. Linden recommends the FUND quitclaim its Prosser property to the other lienholders and pay approximately \$40M for costs and attorney fees in connections with the development of the property.

Although SIERRA available records reflect no title interest in the Prosser Lake Heights property, general ledger as of 10/31/76 reflects this property as an asset having a total book value of \$512,997.82. /It is reported that Franklin recently quitclaimed his remaining interest in the property to SIERRA; however, no evidence of this action has yet been discovered./

In summary, it appears the FUND holds as collateral quitclaim to 80 land locked acres of Prosser Heights and it has been recommended that these acres be conveyed to the prior lienholders at an expense of \$40,000. Additionally, the FUND relinquished \$430,000 in third party real estate contracts held as collateral in order to satisfy previously contracted debts of SIERRA which relate to this property.

2. Sierra Charter Office Building:

On August 10, 1976, Charter Home Builders Corporation, a wholly owned sub-

72-6118 (48)

subsidiary of SIERRA purchased from NLV, Inc. an office building in North Las Vegas which serves as the main office of SIERRA. The purchase is regarded as a related party transaction since the buyer and seller have some of the same officers and shareholders. The purchase price of \$876,400 was comprised of the following:

- a. The assumption of Charter Home Builders of first lien indebtedness of \$546,200 owed to New York Life Insurance Company.
- b. A \$260,000 note secured by a second lien position executed by Charter Home Builders in favor of NLV, Inc. and assigned by NLV, Inc. to Valley Bank of Nevada.
- c. The forgiveness of \$33,200 owed by NLV, Inc. to SIERRA and of \$3,000 owed by NLV, Inc. to Sierra Pipeline.
- d. Cash in the amount of \$16,000 paid by SIERRA to NLV, Inc.
- e. Certain adjustments in minor amounts regarding impounds, escrow fees, and additional advances from SIERRA to NLV, Inc.

The value of the building at cost according to the books of NLV, Inc. as of March 31, 1976 was \$720,500 including the land at \$70,000, and this property represents virtually the only tangible asset of NLV, Inc. Operation of the building for the year ending March 31, 1976 resulted in a loss, before provision for depreciation and amortization, of \$57,100 on rents received of only \$40,700.

Benefit to the FUND of this property as collateral appears questionable considering the large prior liens, low gross revenue, and what might constitute a fair selling price in the open market.

3. Home Savings Association, Reno Nevada - Stock:

As of the July 29, 1976, John H. Pilkington, a director of SIERRA, owed that corporation \$191,404.60 which was reflected on corporation books as Notes Receivable from Officers. In a letter of the same date, to the corporation board of directors, Pilkington offered to assign all rights, title and interest in 40,625 shares of the stock of Home Savings Association, Reno Nevada, on the terms that SIERRA assume a debt to Valley Bank of Nevada in the amount of \$146,500 and in turn execute a full release and discharge of all claims against him by the corporation. Said

72-6118 (48)

offer was accepted by SIERRA on the same date and an assignment of the Home Savings Association stock was executed to the Southern Nevada Culinary Workers and Bartenders Pension Trust on August 5, 1976. Additionally, SIERRA forgave \$16,677.50 of interest accrued and unpaid on the Pilkington receivable and assumed \$1,180.14 of the interest accrued and unpaid on the Valley Bank of Nevada note. An additional SIERRA advance to the John H. Pilkington Trust of \$11,245, which has been apparently forgiven, results in a total cumulative book cost to SIERRA of \$367,007.24 for the 40,625 shares of Home Savings Association.

A letter of 3/21/77 from Robert Banks, president of Home Savings Association, indicates such stock as having a book value of \$6.50 per share. Such book value results in SIERRA'S 40,625 shares having a total book value of \$264,062.50; however, this stock is not actively traded and the market for it appears to be created by a few interested individuals. The result of an attempt to sell a block of stock of this size may provide an amount less than book value and the stock's benefit to the FUND after liquidation of the debt at Valley Bank is anticipated to be minor.

4. I.J.K. Nevada, Inc. - Note Receivable:

Attorney for the FUND, I. R. Ashelman, holds a promissory note of I.J.K. Nevada, Inc. in the amount of \$1,015,936.16, payable to SIERRA. The note is dated November 1, 1975 and is signed by SHENKER, president. Interest is at 11% with a maturity of November 1, 1978. I.J.K. Nevada, Inc. is wholly owned by SHENKER.

The note is consolidation of advances made by SIERRA to I.J.K. which began in 1974. On November 8, 1974, I.J.K. owed SIERRA \$20,000. On November 13, 1974, SIERRA advanced \$350,000; on December 12, 1974, \$361,785.62 was advanced; and on May 21, 1975, \$207,250.13 was advanced. The files of SIERRA contain no evidence of loan agreements, agreements to pay interest, promissory notes or other documentation which might have been executed at the time funds were advanced. The consolidated note represents the total of all advances and \$76,900.21 in accrued interest.

A letter in the files of SIERRA from Edward Pasquale, Assistant Vice President of I.J.K. Nevada, Inc., dated February 9, 1976, indicates the funds advanced from SIERRA being used as follows:

<u>Amount</u>	<u>Date Advanced</u>	<u>Purpose</u>
\$350,000.00	11-13-74	Purchase 61,000 shares of Continental Connector

72-6118 (48)

\$361,785.62	12-12-74	For interest on City National Bank note.
207,250.13	5-21-75	For interest on City National Bank note.

Reportedly, the 61,000 shares of Continental Connect stock was purchased from a trust known as 1 BC Trust, one of the beneficiaries of which was SHENKER. The amounts used to pay interest owed by I.J.K. Nevada to the City National Bank of Los Angeles are reportedly related to a \$15,000,000 loan secured by stock of Continental Connector. The International Brotherhood of Teamsters Central States Southeast and Southwest Area Pension Fund has purchased a participation of \$13,500,000 in the City National Bank Loan.

As FUND collateral, the I.J.K. Nevada, Inc. consolidated note is considered unsecured, supported by the company financial statement of June 30, 1976 prepared by Laventhol and Horwath, CPA's, who chose not to express an opinion on those statements.

The statement reflects total assets of \$21,571,250, debts of \$25,789,645 and a deficit capital position of \$4,218,395. Losses from operations for the year ending June 30, 1976 exceed \$1,000,000. Collection of an unsecured note from an insolvent entity is, at best, doubtful, especially since the bulk of the assets are pledged elsewhere.

5. Seaview Village, Inc.:

Attorney for the FUND, I. R. Ashelman, holds three shares of Seaview Village, Inc. in the name of SIERRA. The stock is not endorsed, nor were stock powers made available. These shares represent 100% ownership and are regarded as FUND collateral. The primary asset of Seaview Village, Inc. is approximately 530 acres of land for development located at Lincoln City, Oregon.

The bulk of the land (490 acres) was originally purchased from Tahoe Island Park, Inc. on March 21, 1972 by Donald Lucas for \$345,000. On September 27, 1976, SIERRA purchased the stock of Seaview (Donald Lucas, Howard J. Finn, and Frank Brahs, principals) for \$3,000 in cash, the assumption of a note in the amount of \$154,242.01, dated June 30, 1976, by Seaview in favor of Howard Finn and Frank Brahs and the assumption of the following debt secured by the land held for development:

- (a) A \$345,000 contract of sale representing the purchase price paid by Lucas in 1972 to acquire the property, payable to Tahoe Island Park, Inc. The unpaid balance of this contract as of December 31, 1976 was \$142,956.25.

72-6118 (48)

- (b) Two notes totaling \$700,000 under deeds of trust in favor of Nebraska Insurance Company. These funds were used to satisfy a judgment against Seaview held by Pioneer Insurance Company.
- (c) A note in the original amount of \$34,000 representing the purchase price of 40 acres of additional land on February 23, 1973, having an outstanding balance of \$19,268.17 on October 31, 1976.

At the time SIERRA acquired Seaview, financial information on the acquired company dated June 30, 1976 reflected a state of insolvency. Total assets amounted to \$716,500, debts of \$1,075,900 and deficit capital of \$398,700.

The land held for development, being Seaview's only real asset, was the subject of a title search by Pioneer National Title Insurance Company as of October 29, 1976. The search revealed 45 exceptions to the title, the more prominent exceptions being as follows:

- (a) Five years of back property taxes plus interest are past due and payable, which could precipitate foreclosure by the County.
- (b) A lien of \$500,000 by Pioneer Insurance Company and a lien of \$515,000 by Nebraska Insurance Company, together constituting a double cloud on the title.
- (c) A \$5,000 lien of Pioneer Insurance Company which has reportedly been satisfied yet not removed from title records.
- (d) A financing statement in favor of Pioneer Insurance Company filed March 12, 1973 which affects fixtures and accounts receivable of Seaview. Reportedly, this lien should have been released earlier.
- (e) Two State of Oregon income tax liens against Seaview entered as of February 12, 1974 and March 30, 1976.

As previously mentioned, the subject property is in Lincoln County, Oregon, which is located near the coast approximately 100 miles south-east of Portland. The area is reported to have an annual rainfall in excess of 96 inches per year. The property apparently has no paved roads due to environmental impact and water supplies are to be diverted from the Salmon River approximately three miles away. An appraisal of the property was prepared by Paul Linden on June 3, 1976 reflecting a value of \$3,655,000. This amount is more than nine times the purchase price of the property and presumes the sale of 220 lots at \$6,500 per lot and a value of \$5,000 per acre on the remaining 445 acres.

72-6118 (48)

6. Country Club Estates:

In February of 1975, Charter Home Builders, Inc., subsidiary of SIERRA, acquired the interest of the now bankrupt, Environmental Communities, Inc. (ECI), in a mobile home park located at Carson City Nevada, known as Country Club Estates. ECI had acquired the park in July, 1973, with a loan of \$1,148,000 from Home Savings Association and in conjunction with the acquisition issued 125,000 shares of their stock to SHENKER, Stanley Franklin, et al. in return for those individuals guarantee of the indebtedness incurred with the purchase.

Charter Home Builders acquisition of the park was based on the assumption of the debt at Home Savings Association, performance of ECI's obligations under a purchase and management agreement to a third party, and ECI's obligation to pay a \$500,000 deposit received from the third party. The transactions between ECI and third parties are nebulous and are the subject of pending litigation. Also, title to the property is unclear as to the position of Charter Home Builders. However, aside from problems of litigation, it appears the park provides little, if any, collateral support to the FUND. Kenneth Unruh, president of SIERRA has stated the probability of the park venture being profitable is doubtful and an internal report of a Sierra Charter Committee indicates that cost of development would exceed probable value by \$1,800,000.

7. Note of Palm Development:

On June 22, 1976, Palm Development Corporation executed a \$2,000,000 note in favor of SIERRA, secured by a deed of trust on a New Mexico land development project known as Volcano Cliffs Subdivision. SIERRA has disbursed \$675,605.75 to Palm under this note as of April 20, 1977, such amount representing the extent of the lien. The property has priority liens consisting of a \$1,100,000 note and lien of first position in favor of First National Bank of Albuquerque. Also, D. W. Falls, president of Palm, holds a \$1,500,000 demand note which appears to be predicated upon this same property. The absence of current title information leaves SIERRA'S lien position to question.

Volcano Cliffs is located on the less desirable West side of Albuquerque, seven miles from downtown, and consists of approximately 975 acres. An appraisal dated October 18, 1974 reflects a \$4,000,000 value for the entire subdivision at optimum conditions. The appraisal noted that of the 975 acres, only 72 acres had paved streets, the remainder having dirt grading or no streets. Present conditions at the development are reportedly improved and a sales program commenced in February of 1977.

Collateral value to the FUND is limited to the extent of the funding by SIERRA on the note to Palm (\$675,605.75). It appears that Palm used the funds disbursed by SIERRA to meet the monthly debt service requirements at the First National Bank of Albuquerque. Reported sales generated

72-6118 (48)

thus far have resulted in no assignments of third party paper or contracts to the FUND and no such contracts were observed as being held as collateral at SIERRA.

8. Note of S. & F. Corporation - Elephant Butte Property:

On March 24, 1976, S. & F. Corporation of Delaware executed a \$500,000 promissory note in favor of SIERRA. The note is past due since September 24, 1976. As collateral, a mortgage deed of same amount was recorded on March 31, 1976, covering certain parcels of real estate which are included in the development known as Elephant Butte located in and around Truth or Consequences, New Mexico. An attorney's opinion of March 9, 1977, indicated that the above note was assigned to the FUND on September 3, 1976, and SIERRA has advanced the entire \$500,000 against the note.

Information regarding this property has not been made clear in that the property described under the mortgage deed and the attorney's title opinion do not read congruously. Furthermore, the title opinion reflects the \$500,000 note due SIERRA as being in first position with no others following; however, FUND real estate consultant reports reflect direct liabilities on the land of \$1,850,000. The title opinion does not express matters relating to tax liens and their status is unknown.

The only formal appraisal available was dated February 19, 1976 prepared by Richard Godfrey and covers 4,614 acres which is apparently the entire development with the lien assigned to the FUND appearing to cover only a fractional part. Value assigned totals \$7,400,000 for all acreage. The appraisal indicates the development as being located in Sierra County which has a total population of approximately 10,000 with no rail or air service. Access to major highways ranges from 75 to 150 miles. The land is valued at from \$500 to \$1,000 per acre. It has been indicated that there have been no lot sales by the developer since early 1975 so that the appraiser was unable to reflect comparable lot sales in establishing lot values. It has also been noted that the water and sewage is not available to all lots.

Consultants to the FUND value that portion of the development on which SIERRA has a lien at \$3,870,000 however, FUND documentation is comprehensively lacking relative to supporting values assigned. Furthermore, the maximum extent of recovery upon a sale of the property would at this point be limited to the amount funded by SIERRA of \$500,000.

9. Note of S. & F. Corporation - Meadow Lake Subdivision:

On June 22, 1976, S. & F. Corporation executed a \$500,000 note in favor of SIERRA, due "on demand or five years from date, whichever is later." Interest is at 11% and is payable annually on the anniversary date of the note on amounts advanced pro rata. The note is predicated upon a mortgage deed covering approximately 535 lots of the Meadow Lake Sub-

72-6118 (48)

division in Valencia County, New Mexico. The note and deed were assigned to the FUND on September 7, 1976 and to date, SIERRA has advanced \$46,000 against the note.

FUND Consultant O'Leary's report to the FUND trustees on January 7, 1977, reflects a present sale value of \$500,000 on this property; however, the report also reflects a \$300,000 bank loan which relates to the property. It is reported that the property is partially developed and some lots have been sold for use with mobile homes.

The \$46,000 expended by SIERRA appears to be the maximum amount of recovery which might be attained upon sale of the property.

10. Deed of Trust: Murrieta Hot Springs Core Area:

On September 1, 1975, MHS executed a deed of trust providing a \$2,000,000 lien on that part of the development referred to as the core area. The deed of trust was for the benefit of SIERRA and that beneficial interest was assigned to the FUND per recording of September 3, 1976 (Exh. 12). A copy of the assignment was obtained from FUND attorney I. R. Ashelman however, the actual deed of trust was not observed. A preliminary title policy (Exh. 13) dated December 29, 1976 reflects the following encumbrances on the property:

- a. County taxes for the fiscal year 1976-1977 of \$202,700.
- b. A sale (foreclosure) to the State of California general taxes for the fiscal year 1975 in the amount of \$424,300.
- c. The \$2,000,000 deed of trust to SIERRA assigned to the FUND.
- d. A deed of trust for the benefit of First State Bank and Trust Company securing any and all obligations of MHS and/or SHENKER.
- e. A deed of trust for the benefit of I.J.K. Nevada, Inc. in the amount of \$500,000.
- f. A deed of trust for the benefit of Shelter Island Hotel Corporation, Inc. in the amount of \$500,000.
- g. A deed of trust for the benefit of Rusar, Inc. securing any and all obligations of MHS and Morris A. and Lillian K. Shenker.
- h. An abstract of judgment in favor of the Conde Nast Publications, Inc., in the amount of \$4,100.

72-6118 (48)

1. An abstract of judgment in favor of Shay Electric Company in the amount of \$7,200.

The core area appears to be regarded as that portion of land upon which the spa, portions of the hotel, and related buildings are located. No formal appraisal of this portion of MHS development was discovered; however, FUND consultants optimistically regard it's value as adequate to satisfy the over \$625,000 in taxes due and effectively recover the full \$2,000,000 under deed of trust.

A reported sale of the entire MHS development to a Dr. R. J. Rudd (the doctorate is reportedly of divinity) for some \$43,000,000 has not been evidenced in any of the books and records reviewed in the course of this investigation by a written agreement between buyer and seller. The amount of funds paid either in earnest or into an undisclosed escrow remains undetermined, but is apparently negligible, if there are any at all.

No financial information was made available on Rudd in order to consider his ability to perform in the event of purchase.

11. Murrieta Hot Springs: Deed of Trust:

Attorney for the FUND, I. R. Ashelman, holds an Assignment of Deed of Trust (Exh. 14) filed for recording on September 3, 1976, in favor of the FUND from SIERRA. The assignment describes the South half of Section 1, Township 7 South, Ranch 3 West, San Bernardino Base and Meridian, in the County of Riverside, State of California. The Deed of Trust assigned was not made available and the monetary extent of lien is unknown. Also, no title information has been obtained.

This parcel appears to be located to the Northeast of the spa area in rough terrain with remote proximity to those areas afforded any development. There is no evidence of any funds being expended to improve this acreage. Values cannot be estimated until title records are searched and the extent of any prior or subsequent liens established.

12. Murrieta Hot Springs: Deed of Trust:

Attorney for the FUND, I. R. Ashelman, holds an Assignment of Deed of Trust (Exh. 15), filed for recording on September 3, 1976, in favor of the FUND from SIERRA. The assignment describes fourteen lots in Tracts 4259, 4108, and 4056 at MHS. The Deed of Trust assigned was not made available and the monetary extent of the lien is unknown. Also, no title information regarding these lots was obtained.

U.S. DEPARTMENT OF LABO
 LABOR-MANAGEMENT SERVICES ADMINISTRATION

WASHINGTON, D.C. 20210

Date: *R*
 Reply to: Thomas F. Kane, Chief
 Date of: Division of Reporting Enforcement
 Subject: Southern Nevada Culinary Workers & Bartenders
 Pension Fund
 To: Las Vegas, Nevada
 72-6118
 To: Edward F. Daly, Director
 Office of Enforcement

*Allen
 Shenker*



*Committee
 Document
 #17*

On August 23, 1977 CO Gerry Birnbaum, LAAO, telephonically contacted the writer and discussed the investigation of the captioned plan to-date.

Presently the LAAO is not performing any investigation while awaiting the writing of letters by Attorney Dave Allen, SOL to the attorneys for Sierra Charter Corp., and Murrietta Hot Springs. The LAAO is awaiting clearance from these corporations so that an audit of the books and records maybe completed. It should be noted that a review of the books and records of Sierra Charter was accomplished by the LAAO but it was ascertained, in the process of taking dispositions of principals of Sierra Charter, that there were other corporate records that were not made available. The LAAO desires to review these additional records.

CO Birnbaum and the writer discussed further the situation of Dave Allen presently on two weeks vacation and that CO Sam Clark, who was working with Gerry on this investigations, was being transferred to the Dallas AO of LMSA in the near future.

As a result of this discussion, the writer advised Gerry to contact the attorney for Sierra Charter and obtain permission to review the additional records. If a letter was required, the writer stated that Gerry should draft the letter for AA Ken Evans' signature. Since time is of the essence, the writer decided to obtain these records now without waiting until Dave Allen returned from vacation.

It was further related that the FBI had information concerning title searches of Murrieta Hot Springs property that may be useful information for our investigation. The writer deemed it necessary to have a title search of the Murrieta property in order to ascertain who has title to the various parcels of Murrietta property. This information would be beneficial not only to this investigation but also to the investigations of the Pipefitters in St. Louis, (62-6782), the HREU Intl., and Automotive, Petroleum and Allied Industries Welfare Fund (62-5212).

The writer discussed with CO Birnbaum how the FBI received this information. It was related that the FBI purchased the services of a title search company, not Title Insurance Company, to perform this service. Since this information was obtained through sources other than by service of a subpoena, the writer deemed it permissible to obtain this information from the FBI. Therefore, the LAAO will work closely with the FBI on this matter. When the FBI obtains its information through the use of a subpoena, the LAAO will discontinue this liaison.

On August 24, 1977, CO Birnbaum advised that he had contacted Attorney Gillane(ph), who represents Sierra Charter and he stated that DOL could start Monday, August 29, 1977, reviewing the additional records of Sierra Charter.

CO Birnbaum was further requested by the writer to contact the attorney for Murrieta and obtain a date for the review of the books and records of Murrieta.

The writer requested that CO Sam Clark be sent to Riverside County to examine the intricacies of searching land titles. We have been advised that this is a monumental task if it is done without the use of a title search company. The LAAO was advised that it cost the FBI \$8,000 to search land records using FBI personnel. If this is true, then some other alternative may be used to obtain the necessary information concerning the lien holders of the Murrieta property.

CO Birnbaum also confirmed that the 3 pieces of land given to the HREU Intl., in settlement of the \$2 million second lien on the property being foreclosed on August 29, 1977, were 3 acres of land at Murrieta which belonged to the Pipefitter of St. Louis. Why this exchange of property in lieu of a \$2 million second mortgage is not known at this time.

Justice - Labor -
Anderson -Committee
Document
#18

SEP 12 1977

MEMORANDUM FOR MONICA GALLAGHER

Subject: Marshall et al. v. Schmontey et al.
CV-LV-77-47-REP, D. Nevada

This is to bring to your attention certain very troublesome developments in the Nevada Culinary Workers' plan litigation, Marshall, et al. v. Schmontey, et al.

As you know, before I left for my vacation (August 19, 1977), I arranged with Lou Joseph to monitor developments in the case; I so advised everyone involved with the case. I also specifically notified Compliance Officers Gerald Birnbaum and Sam Clark that I had not been able to complete the preparation of a Rule 34 request for Sierra Charter Co.'s documents. I had previously notified Tom Kane, Chief of the Division of Reporting Enforcement who is the Division of Enforcement's representative on the case, that I was preparing such a request and would let him know when it was ready.

As I understand developments during my absence, during the week of August 22, 1977, Tom Kane, directed CO Gerald Birnbaum, Los Angeles Area Office, to make direct contact with an attorney for Sierra Charter Corporation, to arrange for the copying of records in the case. I understand that Mr. Birnbaum related to Mr. Kane that I planned to complete the discovery request on returning from vacation and suggested to Mr. Kane that they wait for my return. Mr. Kane apparently disagreed with Mr. Birnbaum's suggestion and directed him to proceed with the discovery not only by contacting Sierra Charter but also by making a similar contact with another defendant, Murrieta Hot Springs.

Pursuant to Mr. Kane's instructions Gerald Birnbaum made the requests of both corporate defendants' counsel, and upon agreement of Sierra Charter's attorney, Mr. Birnbaum and CO Sam Clark spent four days at the offices of Sierra Charter copying certain records. However, counsel for Murrieta Hot Springs asked for a written request under Rule 34, FRCP.

Mr. Kane took no steps to inform this office of his activities other than providing us a copy of a memorandum to Edward F. Daly, relating some of his conversation with Birnbaum, which we received on September 6, 1977, after Mr. Birnbaum had completed carrying out Mr. Kane's instructions.

During the week of August 29, 1977, while Messrs. Birnbaum and Clark were in Las Vegas copying documents at the offices of defendant Sierra Charter Corp., we understand Mr. Kane also directed them to meet with Jeff Anderson, described by Mr. Kane as a Department of Labor attorney detailed to the Los Angeles Strike Force, to advise him of "possible criminal leads" developed in their investigation relating to Marshall v. Schnouter. Pursuant to Mr. Kane's instructions and without notice to this office, Messrs. Birnbaum and Clark met with Jeff Anderson at the U.S. Attorneys office in Las Vegas and responded to his questions regarding possible criminal activities by discussing practices of the Valley Bank of Nevada and loans by Sierra Charter to Sidney Wyman, an associate of Morris Shenker, a defendant in the case. The meeting with Mr. Anderson was brought to our attention in a telephone conversation between Mr. Birnbaum and Louis Joseph after the Anderson meeting occurred.

These activities will probably not create any very serious difficulties for us in the future conduct of our discovery in this case, but they certainly could. For example, I don't know whether the CO's copied all the records we will need; if not, the defendants could make our obtaining the complete set very difficult by digging in their heels on a "one bight" theory. It would be extremely embarrassing to the government for me to have to call one of the COs or Kane as a witness to testify that they never consulted with me about what documents to inspect and copy.

David Allen
Attorney
Plan Benefits Security Division

COL:200000(10000):1011(10010):12-77
File 71 1-10/78

AL

October 25, 1977

U. S. Department of Justice
Peter F. Vaira
Chicago Strike Force
Room 1552
219 South Dearborn Street
Chicago, IL 60604

*Committee
Document
#19*

Re: Upper Avenue Bank of Chicago; Alan Marenson

Dear Pete:

Enclosed for your information are a few pertinent pleadings relating to the appointment of the Upper Avenue Bank of Chicago as "Investment Manager" for the Southern Nevada Culinary and Bartenders Pension Trust following a suit filed under ERISA by the Department of Labor.

I am advised that the asset manager will be one Alan Marenson, Executive Vice-President, who reportedly has strong ties to syndicate figures as well as financial interests in the restaurant and entertainment fields.

We have initiated several investigations into the Culinary Fund, its trustees and the culinary workers and bartenders unions which are its major subscribers.

All information on the bank, its officers and major clients/borrowers and Marenson would be helpful. Obviously, any particular information regarding mismanagement of this or any similar fund would be appreciated.

I will undertake to contact the Labor Department relative to any disclosures or background material supplied same before the bank received approval.

Natuzally, any high-publicity or significant crimes revealed will be artfully concealed from you and steered to this office.

Regards,

GEOFFREY A. ANDERSON
Special Attorney
Las Vegas Strike Force Office

GAA:af

Enclosures

U. S. DEPARTMENT OF LABOR

Labor-Management Security Administration

Washington, D.C. 20210

January 23, 1978
 Thomas F. Kane, Chief
 Division of Reporting Enforcement

Southern Nevada Culinary Workers and
 Bartenders Pension Fund
 (EIN 88-6016617 PX 001)
 Case No. 72-6118

To: Edward F. Daly, Director
 Office of Enforcement

*Committee
 Document
 #21*

On January 23, 1978, at approximately 2:00 p.m., there was a meeting in the PBSO (SOL) conference room with the following persons in attendance:

Donald J. Myers, PBSO-SOL
 Robert R. Bitticks, PBSO-SOL
 David W. Allen, PBSO-SOL
 David C. Areson, IRS
 Mary Jo Fite, IRS
 Tom Kane, Enforcement, PWBP

Carver Nixon, President, Upper Avenue Bank
 Allen J. Marrinson, Executive V.P., Upper Avenue Bank
 Martin R. Hoffmann, Attorney, Gardner, Carton & Douglas
 Richard L. Manson, Attorney, Gardner, Carton & Douglas
 Joel Carlins, Attorney, Joel Carlins Firm

It should be noted that Bob Sandler, ORSE, was unable to attend this meeting due to a prior commitment to sit for the CEBS examination which is available only twice a year.

Don Myers was the spokesman for DOL and he gave a synopsis of how the exemption process worked and the close cooperation between IRS and DOL in processing applications.

Attorney Hoffmann stated that the Upper Avenue Bank (UAB) needed a broad exemption in order to cover (1) actions taken beyond rescission, (2) accumulation of loans without consideration, (3) Morris Shenker has guaranteed loans and therefore any credit to Sierra Charter Corp. (Sierra) would be a credit to Shenker, a party-in-interest (PII), and (4) new transactions undertaken by UAB may necessitate dealing with other PII who are not presently involved with the pension fund. There was a discussion as to what is termed "new" and "old" transactions and what new transactions would be with new PII. Attorney Hoffmann stated that UAB needed a broad exemption because of the closeness of the loans with the casinos and the Nevada Resort Association (NRA). Some preliminary talks with the NRA ascertained that they may step in to assist the UAB in some of these transactions.

Mr. Marrinson related that since August the UAB was doing mostly research work. Since the documentation contained in many of these loans is very poor, any legal suits entered into may be very costly to the pension trust and may not be favorably resolved. The UAB has already saved some assets through its action - Sierra received \$25,000 for the write-off of the Mobile Home Park; Sierra received \$43,000 for the sale of 40 acres of land that was due to be foreclosed in approximately two more days. The 40,625 shares of Home Savings Association stock, according to Mr. Marrinson, may be able to be sold at a price of \$7.00 or \$8.00 a share. The UAB is working on 11 other assets of the plan. After the assets, the UAB will work on the liabilities.

Mr. Marrinson stated that Morris Shenker gives the UAB problems because it has no exemptions from DOL and he will not cooperate until there is an extreme need for final action on an asset. Also, the Gardnerville County officials want to see a copy of the DOL exemption. Also, Sierra officials are wary of UAB actions since Sierra may be forced into bankruptcy by suits filed by Franklin, Finn, and Brahs.

Mr. Marrinson further stated that the Lincoln, Oregon, site may be lost because of the passage of time and the UAB being unable to complete a transaction for this property. The UAB, according to Mr. Marrinson, operates under the shadow of Shenker, even though it feels it is working for the U.S. Government. The exemptions would assist the UAB in fulfilling its obligations. The UAB plans to file its report with the Court on February 3, 1978. Mr. Marrinson stated that the plan is not a sophisticated workout of the assets of the pension trust. Mr. Marrinson stated there is a legal question re the pursuit of Shenker in the litigation of loans. He further stated there is a possibility of fraud in some of these loans. Kane asked if the report would spell this out. Mr. Marrinson said "No."

There was then a further discussion as to how UAB should amend their application for an exemption. This discussion included comments from IRS and PBSB, as well as the UAB. As a result of this discussion, the UAB acknowledged the changes that had to be made in their application for an exemption in order for this application to receive a favorable determination.

The meeting ended at approximately 4:35 p.m.

Personal Observations of the Writer

It was apparent that UAB would receive a favorable determination from IRS and PBSB if the UAB amends their application as requested. The writer concurs with this conclusion as the exemption would give the UAB

greater flexibility in the proper and prudent disposition of the pension trust questionable assets.

Since Mr. Marrinson stated that there may be possible fraud in the acquisition of some of the plan's assets, the writer believes that if UAB files its plan with the Court on February 3, 1978, DOL should interview Mr. Marrinson in depth concerning UAB's findings.

Mr. Marrinson further stated that the cost to the plan in pursuing Shenker concerning the litigation of loans would be very costly and prudence would dictate that the plan not embark on this litigation. The writer believes very strongly that DOL should accept this challenge to litigation against Shenker. The writer believes that since the pension trust has these "personal guarantees" of Shenker, DOL should not let Shenker "off the hook." The writer feels that the pursuit of Shenker for payment would obtain all monies owed to the pension trust or force Shenker into bankruptcy. If Shenker goes into bankruptcy he would lose his position at the Dunes Hotel as it would violate the Nevada Gaming Commission laws. The writer believes Shenker would not want to lose the Dunes Hotel, and therefore he would make all necessary payments to avert bankruptcy. The writer believes that a joint effort against Shenker could be made by DOL, IRS, and the Department of Justice. IRS is presently involved in a tax fraud investigation of Shenker. Justice is readying a complete probe of the Culinary Workers in Las Vegas (per information from LAAO).

It should be noted that Attorney Hoffmann stated from his contacts with Shenker he ascertained that Shenker was spending quite a bit of time in New York. This indicates to the writer that DOL should alert the NYRO as Shenker may possibly be getting involved with another benefit plan in the New York area in order to assist him in his financial problems.

Attached is a copy of the application for exemption made by the UAB.

Enclosure

cc-Ballard

SFRO

LAAO

Robert Sandler-ORSE

Kane

FEB 1978

Edward F. Daly, Director
Office of Enforcement

Southern Nevada Culinary Workers and
Bartenders Pension Fund
Las Vegas, Nevada
Case No. 72-6118

*Committee
Document
#23*

To: Kenneth L. Evans, Area Administrator
Los Angeles Area Office

Ref: LAAO memo dated January 17, 1978

On February 3, 1978, there was a meeting in Jack Ballard's office concerning the above referenced memorandum from the LAAO, with the following persons in attendance:

Jack Ballard, Deputy Administrator
Norman Goldberg, SOL
David Allen, SOL
Judy Burghardt, SOL
Ed Daly, Enforcement
Len Garafolo, FWBP Supervisor, LAAO
Tom Kane, Enforcement

There was a discussion of the captioned case and its ramifications as it pertains to the question set out in the above referenced memo. The following determinations were made as a result of this discussion:

1. The LAAO was not to make any commitment of manpower to the strike force.
2. It was believed that the Upper Avenue Bank would submit its proposal to the U.S. District Court in Las Vegas on February 22, 1978, on the manner it plans to use in the management and/or disposition of the subject plan's assets. The DOL and plan trustees will have approximately 20 days to respond to the UAB's plan.
3. Additional depositions will be taken by SOL from the plan trustees in Las Vegas during the week of February 20, 1978. Attorney Dave Allen requested that CO Sam Clark, Dallas AO, be available to assist in these depositions since CO Gerry Birnbaum, LAAO, will not be available.
4. The last week in February or the first week in March 1978 will be the target date for the continuation of the audit review of the books and records of Murrieta Hot Springs (MHS). This audit review was discontinued because all the books and records were not made available in December 1977. COs Clark and Birnbaum will be needed for this audit review, together with two staff accountants from the Office of Enforcement.

SEARCHED	INDEXED	SERIALIZED
SERIALIZED	FILED	FILED
	SA	2/7/8

FWBP:TFKane/dkt 2/7/78

Enclosure

It was believed that the Strike Force request to review the LAAO the captioned plan would be permitted with the understanding that the Strike Force would not issue any Grand Jury subpoenas until after the items (2, 3, 4) were completed. Once these items are completed, the Strike Force could take any action it deemed necessary as DOL would be in a position for any civil action necessary in this matter.

cc-San Francisco RO
Dave Allen (SOL)

Enforcement
Kane
Chron

July 13, 1978

Edward F. Daly, Director
Office of Enforcement

July 13 Meeting re
Southern Nevada Culinary and Bartenders
Pension Trust, Las Vegas, Nevada
File 72-6118

The Files

*Committee
Document
#29*

*Monica
Kane*

Attendees: Ian Lanoff, J.V. Ballard, Monica Gallagher, Judy Burghardt,
T.F. Kane, E.F. Daly.

1. The meeting was called to discuss T.F. Kane's memo of July 12, 1978.
2. Ian asked for T.F. Kane's recommendations. T.F. Kane said we should move against Shenker on his personal guarantees. Monica said that Shenker's assets are all pledged and moving against him would be unproductive.
3. The discussion centered around how DOL could answer anticipated arguments that the fund was merely trying to preserve poor past investments through contributed additional funds to the project.
4. Goldberg indicated that we have a "deep pocket" in that UAB is a fiduciary. When the discussion considered getting additional information from the bank and other sources, Goldberg suggested that we are better off without additional information.
5. J.V. Ballard suggested that Ian would be in a difficult position answering to a Congressional committee in view of Shenker's involvement and our failure to do anything. J.V. Ballard suggested some action. The Solicitor's people thought we would have difficulty making a case under the "prudency requirements." Ian considered the possibility of getting it back to the court someday but Monica didn't think we could do so.
6. Ian suggested that we have two options - (1) toughen up reporting requirements or (2) get a real estate expert to look at the two most recent transactions. OE will attempt to get a real estate expert.

Ian considered the possibility of interviewing M. Paul Heck. Judy Burghardt advised that Attorney Hoffman is bringing in information on Heck next week and at that time if we do not have enough information, we may have to interview.

DEPARTMENT OF LABOR

BUREAU OF LABOR RELATIONS

July 28, 1978

MEMORANDUM FOR: Edward F. Daly, Director
Office of Enforcement

FROM: Thomas F. Kane, Chief
Division of Reporting Enforcement

SUBJECT: Southern Nevada Culinary and Bartenders
Pension Trust
Las Vegas, Nevada
Case No. 72-6118

Re: Paul Kouris

✓ Kane
UAB
Committee
Document
#30

On July 27, 1978, at approximately 12:30 p.m., the writer telephonically contacted Mr. Richard P. Kiep, Executive Vice President and Senior Trust Officer, Upper Avenue Bank (UAB), phone number 312/944-7000, concerning Mr. Kouris' allegations regarding Attorney Joel Carlins. In essence, the writer desired to know the results of the audit conducted by the UAB into these allegations.

Mr. Kiep related that the audit had to be redone because the billings received from Attorney Carlins could not be "tied in" or verified with the allegations. Therefore, the results would not be known for another month or two.

The writer then queried Mr. Kiep concerning the \$5,000 credit the UAB received from Attorney Carlins. The writer asked if this was the result of the UAB audit findings. Mr. Kiep said "No" but that Attorney Carlins instigated this credit memo with the explanation that this refund pertained to the training period of the informant Kouris and should not have been billed to the UAB. The writer advised Mr. Kiep that he would be recontacted in approximately one month or so concerning this matter.

The writer then telephoned Mr. Paul Kouris, 213/627-2122. Mr. Kouris was not in his office but would be available at the office tomorrow (July 28).

The writer believes that the LAAO should be given this matter. In order to safeguard Kouris' information and documents, the LAAO will be requested to interview Kouris and obtain all the pertinent information and documents in his possession concerning the false billing by Attorney Carlins to the UAB.

Since Kouris has displayed an interest in the outcome of his allegations in this matter, the writer believes that DOL should take an active role in this matter in the event that Kouris makes his allegations to the public.

cc-Ballard Burghardt (SCL)

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR



Benjamin R. Civiletti
Assistant Attorney General
Criminal Division
U.S. Department of Justice
Washington, D.C. 20530

*Committee
Document
-11*

Dear Mr. Civiletti:

This is in response to your letter of April 25, 1977, in which you raised questions concerning the concurrent responsibilities of the Department of Labor in enforcing provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and of the Department of Justice in enforcing criminal statutes relating to employee benefit plans.

Your letter referred to two cases in which you believe the ERISA enforcement activities of the Department of Labor have interfered with criminal investigations conducted by the Department of Justice.

You stated that in one case the Department of Justice was not informed of matters "obviously requiring criminal investigation" until after the filing of a civil action by us when newspaper accounts reported the violations; and you suggested that in the second case employees of this Department interfered with the issuance of a grand jury subpoena.

While your letter did not specifically identify the cases which you describe, I am advised that it is likely that both references relate to our action in Marshall et al. v. Schmoutev et al. against the trustees of the Southern Nevada Culinary and Bartenders Pension Trust and others. Accordingly, I am attaching a memorandum from Steven J. Sacher, Associate Solicitor of Labor, Plan Benefits Security Division, describing events in the development of that case which may be relevant to the matters about which you are concerned.

Based on Mr. Sacher's memorandum, I am convinced that there has been no failure by the Department of Labor to refer to the Attorney General any matter warranting consideration for criminal prosecution and that no employee of this Department has interfered with the issuance of a grand jury subpoena.

In Schmoutey, this Department advised appropriate officials of the Department of Justice in advance of our action and we have complied with a request for information. We have requested and received assurances of a limited delay in the pursuit by the United States Attorney of part of the criminal investigation relating to this matter. In the circumstances, where a criminal investigation might have disrupted negotiations for interim relief or rendered litigation of our motion for preliminary injunction more difficult, and where the preliminary relief sought was necessary to protect the pension plan from great losses, I am satisfied that our request for a delay was both necessary and appropriate.

With regard to a recent request by an attorney in your Division for a meeting at which Department of Labor compliance officers assigned to this case may be interviewed by an Assistant United States Attorney, I have advised the Administrator, Pension and Welfare Benefit Programs, that such an assignment of personnel would be disruptive of our efforts for the reasons outlined in the memorandum attached. In addition, I understand that this request was made directly to a member of the Pension and Welfare Benefit Programs staff of this Department. When such requests or inquiries relate to a matter in litigation, they are properly directed to the Office of the Solicitor, so that the attorneys responsible for the litigation may evaluate the nature of the information requested and the possible impact of the request on the case in litigation.

It is the policy of this Department to refer to the Department of Justice any information which warrants consideration for criminal prosecution. However, there may be cases where the need to protect employee benefit plans from threatened harm may require our immediate commencement of a civil action prior to such referral. This situation has not, in my opinion, arisen in the Schmoutey case.

We regret your suggestion that we have interfered with criminal investigations conducted by the Department of Justice because we are satisfied that this has never occurred. On the other hand, there have been occasions when our efforts to avoid the risk of such interference have resulted in unfortunate delays in seeking needed civil remedies. In one such case, involving the Associated Trades and Crafts Union plans, officials of this Department have engaged in efforts at coordination with the Cleveland Strike Force for more than a year, so far without reaching an understanding which would permit us to seek a civil remedy.

Because I agree that difficulties have arisen in this area of concurrent responsibility, despite our apparent difference of opinion concerning the reasons, I agree that a meeting of representatives of this office and your Division would be useful.

Sincerely,

Carin Ann Clauss
Solicitor of Labor

ERISA CASES AND MATTERS

PART I

CASES PENDING OR AUTHORIZED FOR LITIGATION* (December 11, 1981)A. ENFORCEMENT CASES1. Donovan v. Wilson et al., 08-70-103 (E.D. Tenn.)

In this action, the Secretary alleged a wide variety of breaches of fiduciary responsibility by the trustees of the Southern Laborers Union pension and welfare plans. The action was filed on November 23, 1976, and was settled on June 6, 1977, by the entry of a consent decree providing for exclusion of the trustees, who resigned from fiduciary office for five years, restitution of funds to the plans, and the adoption of procedures to avoid similar fiduciary breaches in the future. Following a six-day hearing on our motion for an order compelling compliance with various provisions of the decree, a special master issued a 70-page opinion requiring the trustees to pay an additional \$75,000 to the plans. The special master's ruling was generally affirmed by the district court. Defendants have voluntarily dismissed their appeal to the Sixth Circuit, and we are now taking steps to enforce the judgments.

2. Donovan v. Schmouley, et al., 08-46-112 (D. Nev.)

Our complaint was filed March 30, 1977 against the fiduciaries of the Culinary Workers plan, alleging that they had imprudently invested over \$30 million in corporations owned or controlled by Morris Shenker. Morris Shenker was also named as a defendant. The Department sought a preliminary injunction against further advances from the plan in violation of ERISA §§404 and 406, and for appointment of an interim receiver. The motion was disposed of by a stipulation entered on August 30, 1977, under which the trustees' appointment of an independent manager to take charge of the plan's real estate assets was recognized, and procedures governing the manager's conduct were established. Extensive discovery in the district court is expected to conclude in March 1982. A trial date is tentatively set for May, 1982.

*/ This does not include all pending subpoena enforcement actions because, generally, those cases do not involve a substantial expenditure of resources. Two exceptions are the Shaw and National Bank of Alaska cases which are described at paragraphs 23 and 31 below. In addition to those two cases approximately four other subpoena enforcement cases are pending.

3. Donovan v. Williams, et al., 08-57-128 (N.D. Ohio)

The Secretary of Labor filed this action on May 8, 1978. On August 29, 1978, the court entered a consent order, signed by the parties, which (1) preliminarily enjoins defendants from taking any further action with regard to any of the five plans involved and (2) provides for appointment of an interim receiver. On October 3, 1978, the court appointed two persons as interim co-receivers and subsequently, on November 13, the court revised its prior order, by designating one appointee as receiver and the other as counsel for the receiver. In the underlying complaint we allege a broad range of 404 and 406 violations, reporting violations, and failure to obtain bonding under §412. Discovery will be completed January 1, 1982, with trial expected early next year.

4. Donovan v. Taneloff, et al., 08-51-133 (S.D.N.Y.)

The complaint was filed on August 18, 1978. Our motion for summary judgment was granted on July 31, 1979, directing the defendants to pay \$138,000 to the plan for their prior breaches of fiduciary duties. A judgment was entered on our motion on September 27, 1979. The receiver is making preparations to distribute benefits to the participants. Defendants have noted an appeal. An additional \$19,000 was added to the judgment by the court, making the total judgment \$157,000. The receiver is now in the process of enforcing the judgment.

5. Donovan v. Loeb, 08-47-134 (D.N.H.)

This case was filed on September 19, 1978 and a consent order was entered July 1979. Part of the relief ordered by the court was the sale by the plan of its 25% interest in the Union Leader Corporation. The stock, which had been valued at \$750,000, was sold for \$1,500,000. The district court and parties are currently arranging for equitable distribution of benefits to the plan's participants and beneficiaries, including substantial amounts recovered by the Department on behalf of the plan through the consent order.

6. Donovan v. Laganella, 08-48-127 (D.N.J.)

On December 7, 1978, the Secretary filed a complaint alleging fiduciary violations concerning loans made by a profit-sharing plan to its corporate sponsor. The court has entered an order

removing the defendants as fiduciaries and mandating a 2-year repayment of all outstanding plan obligations, amounting to more than \$600,000. On October 9, 1979, the court denied the defendant's motion to postpone payments due to the plan pursuant to the earlier order entered by the court. Defendant has paid virtually all of his debt to the plan. The court has recently ruled on all remaining issues in the case.

7. Donovan v. Rubin, et al., 08-18-126 (S.D. Fla.)

The complaint was filed on December 28, 1978 against trustees and other individuals associated with the Southeast Florida Laborers' Severance Pay Trust Fund, alleging imprudence in the purchase of whole life insurance. Two consent orders were entered on September 30, 1981 with all of the management trustees which provide for restitution and injunctive relief. A separate consent order with the law firm defendants has been proposed and will be presented to the Court soon. The case is proceeding against the remaining defendants.

8. Donovan v. Mazzola, et al., 08-11-132 (N.D. Cal.)

The Secretary filed this suit alleging violations of ERISA §§404(a)(1)(A)-(C) and 406(b)(2) on January 23, 1979. On May 16, 1981, the magistrate entered findings of fact and conclusions of law, generally in our favor. On November 17, 1981, the district court affirmed the magistrate's findings of fact and significantly broadened the relief recommended, ordering the appointment of an investment manager and the posting of \$1 million indemnity bond. Post trial proceedings regarding implementation of relief will be held early next year.

9. Donovan v. Tricario, et al., 08-18-125 (S.D. Fla.)

On February 16, 1979, the Secretary filed a complaint in which his principal contention was that plan trustees, a plan consultant, and a plan administrator violated §§404(a)(1)(A) and (B) in the purchase and maintenance of certain whole life insurance policies. We also named four non-fiduciaries as defendants, alleging that they participated in, and induced, the aforementioned imprudent conduct. On August 21, 1980, the

court consolidated this case for purposes of discovery and trial with three other cases (Donovan v. Esposito, Donovan v. Florida Administrators, Inc., and Donovan v. Gordon) brought by the Secretary involving many of the same issues and parties. On September 18, 1981, a consent order was entered resolving all of the Secretary's claims for monetary relief, (which exceeded \$600,000), except for the claims against Salvatore Tricario for his receipt of a boat from the plan's insurance carrier. The consent order also settled the Secretary's claims for injunctive relief against all but three of the defendants, and the case is proceeding against the remaining defendants.

10. Donovan v. Feeney, 08-48-139 (D.N.J.)

On February 23, 1979, the Secretary filed a complaint alleging fiduciary violations in connection with the work-out of a troubled pre-ERISA loan. The court granted the Secretary's motion for preliminary relief, including the appointment of a receiver. Defendants' appeal of this order to the Third Circuit was denied on August 7, 1980. Trial was held in June 1981. A determination of this action is expected shortly.

11. Donovan v. Unicorn Group, 08-48-140 (S.D.N.Y.)

In this action, which was filed on March 29, 1979, the Department alleged that an investment manager had made imprudent loans, totalling \$4 million. Lawyers for the plan have also been named as knowing participants in the breach on the grounds that they accepted \$315,000 in connection with the loans. Discovery is partially completed. Trial is set for the first week in March 1982.

12. Donovan v. Campbell, 08-31-142 (W.D. Ky.)

We filed our complaint on May 18, 1979, alleging that the plan fiduciaries' failure to collect pre-ERISA and post-ERISA loans to the plan sponsor constitute violations of §§404 and 406. We sought restitution and removal. On June 11, 1979, the defendants entered into a consent decree for preliminary relief, including the appointment of a receiver. The receiver has petitioned the bankruptcy court to declare the debt of two of the defendants, now bankrupts, nondischargable in bankruptcy. On July 25, 1980, we entered into a

consent decree with the two bankrupt defendants, who agreed to make restitution of \$32,000. Defendants have since reneged on this settlement and the plan receiver is proceeding to enforce the consent decree. We are continuing with discovery as regards the third defendant. Meanwhile, the plan's receiver has filed suit in state court against the remaining defendant on a contract claim involving the remainder of the money owing to the plan.

13. Donovan v. Carroll, 38-11-109 (N.D. Cal.)

On June 25, 1979, we filed a complaint alleging violations of §§404 and 406 in connection with purchase of certain Deposit Administration Contracts of Insurance. Trial was held in April 1980. On April 18, 1980, the Court read its decision into the record finding that the defendants had violated §§404 and 406, as alleged by the Secretary. The Court granted the injunctive relief sought by the Secretary and ordered the defendants to reimburse the plans \$198,000 for the excess commissions paid to them. An appeal was noted and appellants filed their brief in November, 1980. Our brief was filed in January 1981. We are awaiting oral argument.

14. Donovan v. Mercer, 08-73-151 (N.D. Tex.)

On November 5, 1979, we filed a complaint against Tommy and Wanda Jo Mercer alleging fiduciary violations concerning loans from the T. E. Mercer Employees Retirement Plan to the plan sponsor and two other companies primarily owned by Tommy Mercer. The losses stemming from the alleged violations amount to nearly \$800,000. On November 7 1979, a consent order was entered, providing that the Mercers step down as trustees, that Tommy Mercer be enjoined from further pursuing a state court action in the nature of an accounting regarding the plan and that an interim receiver be appointed. Trial on the merits was held on November 24 and 25, 1980. Post trial briefs were submitted in January and February 1981, and a decision is expected soon.

15. Donovan v. Esposito, et al., 08-18-146 (S.D. Fla.)

This case, which was filed on November 28, 1979, is consolidated with Donovan v. Tricario, *supra*, number 9. On September 18, 1981, the Court entered a consent order which settled the Secretary's claims against all but two of the defendants. The case is proceeding against the remaining defendants.

16. Donovan v. Gordon, et al., 08-18-147 (S.D. Fla.)

This case, which was filed on November 28, 1979, is consolidated with Donovan v. Tricario, supra, number 9. On September 18, 1981, the Court entered a consent order which settled all of the Secretary's claims against all of the defendants in this case.

17. Donovan v. Florida Administrators, Inc., et al., 08-18-148 (S.D. Fla.)

This case, which was filed on November 28, 1979, is consolidated with Donovan v. Tricario, supra, number 9. On September 18, 1981, the Court entered a consent order which settled all of the Secretary's claims against all of the defendants in this case.

18. Donovan v. Dillingham, 38-11-110 (N.D. Ga.)

On December 18, 1979, we commenced this action against the trustees and service provider of a group insurance arrangement holding the assets of over fifty welfare plans. The complaint charges that the defendants, as fiduciaries to all of the plans, commingled plan assets with those of the service providers and engaged in a multitude of self-dealing and other prohibited transactions. We are seeking appointment of a receiver, restitution, and other injunctive relief. Defendants' motion to dismiss the complaint for lack of subject matter jurisdiction was granted. The Secretary appealed, defendants cross-appealed, and oral argument was held on December 9, 1981.

19. Donovan v. Tolley International Corporation, 08-37-149 (S.D. Ind.)

On December 20, 1979, we filed this complaint alleging that Tolley, in its capacity as consultant to the Midwestern Teamsters Health and Welfare Trust, had imprudently advised the trustees to enter into a hold-harmless agreement with the plan's insurers. We seek to hold Tolley liable for \$750,000 in losses suffered by the plan as a result of the agreement, representing claims paid by the plan which otherwise would have been the insurer's responsibility. Discovery is in progress. Tolley's motion for summary judgment based on the statute of limitations is pending.

20. Donovan v. Shanbaum, et al., 08-73-155 (N.D. Tex.)

On January 25, 1980, we filed this complaint against three trustees and two corporate entities alleging fiduciary violations and party in interest prohibited transactions, primarily concerning extensions of credit in excess of \$2,000,000. Pursuant to a consent order signed September 24, 1981, the trustees agreed to repay over \$1.1 million to the plans in addition to one million dollars which had already been repaid since suit was brought. Defendant Shanbaum was permanently enjoined from serving as trustee of either plan and was replaced by a court appointed trustee.

21. Donovan v. Davis, 08-38-157 (W.D. Mich.)

On March 12, 1980, we filed a complaint alleging that trustees of a vacation fund violated ERISA §§403(c)(1), 404(a)(1)(A), 404(a)(1)(B), 404(a)(1)(D), and 406(a)(1)(D) by transferring or authorizing the transfer of plan assets to the union to satisfy the participants' union dues obligations, at times when the participants were not themselves entitled to receive any benefits under the plan. Cross motions for summary judgment were filed January 31, 1981. On June 29, 1981, the court granted partial summary judgment for the Secretary. A hearing on damages has been held and a judgment is expected shortly.

22. Donovan v. Glass/Metal Association and Glaziers and Glassworkers Pension Plan, et al., 08-21-164 (D. Hawaii)

On June 26, 1980, the Secretary filed a lawsuit seeking to enjoin the trustees of the pension plan from disbursing \$1.2 million of plan assets to an unreliable borrower on or before June 30, 1980. After several agreed upon deferrals of the loan, on December 18, 1980, after a hearing, the Court granted our motion for a preliminary injunction preventing disbursement of the loan. Based on the defendants' representation that the loan would never be made, the court has dismissed the complaint and the action is now concluded.

23. Donovan v. Shaw, 15-42-132 (E.D. Mo.)

This is an administrative subpoena enforcement action filed on August 1, 1980 which was brought in furtherance of an ongoing investigation of a defined contribution plan. On December 24, 1980, the court issued an order approving in part, and denying in part, enforcement of the Secretary's subpoena. The court's

limitation of the subpoena is predicated upon an incorrect interpretation of ERISA §3001(d). This decision was appealed to the 8th Circuit where oral argument was held on November 10, 1981.

24. Donovan v. O'Donnell, 08-16-170 (D. Md.)

The complaint in this case, which was filed on September 10, 1980, alleges that the plan had made numerous loans and extensions of credit to the plan sponsor. A consent decree was entered providing for repayment of these sums. Defendants have failed to comply with the order and supplemental proceedings are underway.

25. Donovan v. Breed, 08-18-67 (S.D. Fla.)

On October 3, 1980, the Secretary filed a complaint in which his principal contention was that plan trustees and a plan consultant violated §§404(a)(1)(A) and (B) in the purchase and maintenance of certain whole life insurance policies. A consent order was entered on September 18, 1981 providing restitution and injunctive relief as to all of the defendants.

26. Donovan v. Giardiello, 08-18-169 (S.D. Fla.)

The Secretary filed this action in October 1980 against plan trustees and service providers. The complaint alleges that the trustees violated §§404 and 406 by causing the plan to enter into certain service provider contracts that resulted in the payment of excessive fees and the transfer of plan assets to parties in interest. Total losses exceed \$2.5 million. In addition to relief sought against trustees, the Secretary is seeking to obtain restitution from non-fiduciaries who knowingly participated in the breaches of trust committed by fiduciaries. In April 1981, the Court denied motions by the non-fiduciary defendants to dismiss the complaint. A consent order was entered on September 18, 1981 as to Arnold and Jerome Grossman for restitution of losses attributable to their conduct (\$86,000) and injunctive relief. Discovery is in progress as to the remaining defendants.

27. Donovan v. Cascade Employers Association, et al., 08-61-162 (D. Ore.)

On November 28, 1980, a complaint was filed. The case involves payment by an employee benefit plan of the expenses associated with the solicitation of new plan participants. A consent order was entered on May 18, 1981, which we are monitoring.

28. Donovan v. Beam, (W.D. Wash.) (08-82-173)

On December 11, 1980 the Secretary filed a complaint against the trustees and officers of the Transwestern Employer-Employee Benefit Association, United Service Employee Benefit Association, United Service Employee Benefit Association and Merit Dental Plan alleging self-dealing in violation of ERISA §§404(a)(1)(A) and (B), 406(a)(1)(A), (C) and (D), and failure to obtain adequate bonding as required by ERISA §412. The Associations are METS which have generally been operated to enrich the principals involved at the expense of the plans. The suit will seek restitution from the fiduciaries and parties in interest for losses arising from violation of the fiduciary duty standards of ERISA. Discovery is proceeding and settlement negotiations are being conducted with respect to one of the trustees.

29. Donovan v. Leigh, et al., 08-51-174 (D. Mass.)

On January 15, 1981, we filed suit against past and present trustees of the New England Teamsters and Trucking Industry Pension Fund, and against a former real estate investment advisor to the plan. The complaint alleges that the plan trustees allowed the plan's real estate investment advisor to receive commissions from parties who sold real estate to the plan, and that the trustees agreed to changes in the contract with the real estate investment advisor which were not beneficial to the plan's participants and beneficiaries. The complaint charges the real estate investment advisor with engaging in prohibited transactions by receiving consideration for his own personal account from parties who sold real estate to the plan. The suit seeks restitution from the trustees and the advisor for losses caused to the plan, and other injunctive relief. Defendants filed a motion to dismiss which was denied. Discovery is proceeding.

30. Donovan v. Carr, 08-06-153 (D. Alaska).

On January 19, 1981, we filed a complaint and a partial consent decree in this case involving the Alaska Teamsters Pension and Welfare Plans. The violations include substantial prohibited transactions, some of which are also imprudent. Certain issues remain for possible future litigation.

31. Donovan v. National Bank of Alaska, 15-06-137 (D. Alaska)

On March 9, 1981 we filed a petition for enforcement of an administrative subpoena served on the National Bank of Alaska. The district court denied enforcement on the ground that the Secretary did not personally sign the subpoena or authorize the investigation with respect to which the subpoena was issued. We have appealed to the 9th Circuit Court of Appeals and have asked for expedited consideration.

32. Donovan v. Worthy, 08-73-179 (N.D. Ga.)

On April 14, 1981 we filed suit against the trustees of the Medical Arts Profit Sharing Plan, and two corporations and a partnership in which the trustees held financial interests, alleging that the trustees caused the plan to enter into prohibited loans and stock purchases with the corporate defendants and partnership in violation of ERISA §§404 and 406. We also alleged violations of the reporting and disclosure provisions of §103. On September 1, 1981, a consent decree was entered providing for the rescission of all prohibited loans and stock purchases and the restoration of approximately \$270,000 to the plan. The decree also provides for injunctive relief including a prohibition on either of the trustees from serving as plan fiduciaries for a period of five years.

33. Donovan v. Roseman, 08-64-180 (S.D. Fla.)

Suit was brought on April 16, 1981 against the former trustee of the Electric Equipment Co. Profit Sharing Plan for transferring plan assets to the sponsoring company. A trial date is expected in the near future.

34. Donovan v. Brown, 08-29-175 (D. Kansas)

The Secretary of Labor filed this case on April 24, 1981 with respect to prohibited sales of mortgages between Regional Investment Company, the plan sponsor, and the Regional Investment Company Profit Sharing Plan. We settled the case by consent order on the same date.

35. Donovan v. Walton, et al., 08-18-176 (S.D. Fla.)

On May 20, 1981, suit was filed against the trustees of the International Union of Operating Engineers Local 675 Pension Plan alleging that they breached their fiduciary duties under ERISA §§404 and 406 by using plan assets for an office building and auditorium complex designed and intended for occupancy by the local union and by making mortgage loans to plan participants at below market rates. Discovery is proceeding.

36. Donovan v. R. J. Louis and Co., Inc., et al., 08-39-182) (E.D. Wis.)

Suit was filed on June 15, 1981 in the Eastern District of Wisconsin alleging receipt of payments by the investment advisor for 15 employee benefit plans from a limited partnership which the investment advisor caused the plans to invest in, and also alleging receipt of payments from a corporation related to the limited partnership. This case is in discovery.

37. Donovan v. Guaranty Nat'l. Bank, et al., 08-84-185 (S.D. W. Va.)

We filed suit on June 18, 1981, against the Guaranty National Bank, in its capacity as investment manager, and the trustees of the Int'l. Union of Operating Engineers Local 132 Pension Fund. The complaint alleges that the Bank and the trustees of the fund violated the diversification provision of §404(a)(1)(C) of ERISA by investing over 97% of the fund's assets in real estate first mortgages in the Huntington, West Virginia area. Discovery is proceeding.

38. Donovan v. Daugherty, et al., 08-03-178 (S.D. Ala.)

Suit was filed on June 29, 1981, alleging that the trustees of the A.F. of L. A.G.C. Building Trades Pension Welfare Plans breached their fiduciary duties under §§404 and 406 by authorizing the plans to make non-exempt payments to themselves as plan fiduciaries, causing the plans to make contributions on their behalf so as to make themselves eligible as participants for the payment of benefits from the plans, and causing the plans to extend coverage to the plans' attorney as a participant in the plans and to pay such attorney benefits from the plans. The attorney was named as a knowing participant in the breaches. Discovery is proceeding and trial has been set for January 1982.

39. Donovan v. Harbor Administrators, et al., 08-11E-190
(E.D. Cal.)

On July 15, 1981, we filed suit against the plan administrator of several hundred welfare plans, as well as several related corporations, and the principals of those corporations. Our complaint alleges that the defendants caused the plans to spend excessive and unnecessary sums for plan administrative expenses and caused the plans to pay unnecessary and unlawful commissions for placement of insurance coverage and for the solicitation of new business for the plan administrator. Our complaint seeks restitution, removal, and other injunctive relief. The case is now in discovery.

40. Donovan v. Hendershott, 08-57-177 (S.D. Ohio)

Litigation was commenced on August 21, 1981 against four individuals and a bank associated with 32 dental employee benefit plans sponsored by local Paperworkers' unions alleging that they have knowingly participated in violations of ERISA §§404 and 406(b). On September 2, 1981, the court entered two consent orders with respect to defendants Second National Bank and Herbert Scott. A third consent order with respect to Mark Mirken also was entered by the court thereafter. Discovery is in progress as to the remaining defendants.

41. Donovan v. Carlough et al., 08-16-184 (D.D.C.)

Litigation was commenced on August 25, 1981 against trustees of the National Stabilization Agreement of the Sheet Metal Industry Fund for unlawful discrimination in the payment of benefit claims so as to penalize participants belonging to a local withdrawing from the fund. We have alleged that more than \$600,000 in benefits were improperly denied. Discovery is in progress.

42. Donovan v. Kinkade et al., 08-62-186, (E.D. Pa.)

On October 6, 1981, a complaint and consent order were filed in this case against the trustees of the Composition Roofers Local 30 Vacation Fund and the Residential Re-Roofers Local 30B Vacation Fund, who violated the reporting and disclosure provisions of ERISA. Defendants have signed a consent order which has been filed with our complaint.

43. Donovan v. Bierwirth, 08-52-198 (E.D.N.Y.)

On October 19, 1981, we filed suit against the trustees of the Grumman Corporation Pension Plan alleging that they violated ERISA by acquiring and holding plan sponsor stock in order to assist in defeating a takeover. The Trustees acquired over 1.1 million shares of Grumman stock, at an average price of \$38 per share. On December 3, 1981, the Court held that the trustees had violated ERISA and granted our motion for preliminary injunction.

44. Donovan v. McKanna, et al., 08-13-188 (D. Col.)

A complaint was filed on November 5, 1981 alleging that the trustees of the Elm Distributors Inc., and Tops Unlimited, Inc. Profit Sharing Plans have violated ERISA §406(a) by causing the plans to enter into numerous party in interest extensions of credit. A consent order reversing the prohibited transactions was entered on November 10, 1981..

45. Donovan v. Bresnick et al., 08-36-194 (D. Mass.)

This case involves the trustees of the Purity Supreme, Inc. Pension Plan who violated ERISA §§406(a) and (b) by causing the plan to enter into a party in interest extension of credit, in addition to self-dealing by Bresnick, one of the plan trustees. On November 6, 1981, a complaint was filed with a consent order reversing the prohibited transaction. The consent order was entered on November 13, 1981.

B. DEFENSIVE CASES1. Hopkins v. U.S.A., 05-03-131 (S.D. Ala.)

Plaintiff alleges an entitlement to benefits from a plan and has named as defendants the United States, the Secretary of Health, Education and Welfare, the Secretary of Labor and the Secretary of the Treasury. The U. S. Attorney's Office has filed a motion to dismiss. That motion was granted and an appeal has been filed.

2. Insurance & Prepaid Benefits Trust (IBT) v. Donovan, 05-12C-133 (C.D. Cal.)

On July 23, 1979, the Department advised Insurance & Prepaid Benefits Trust (IBT) of our determination that IBT was not an employee welfare benefit plan, as defined in ERISA. On August 9, 1979, IBT filed suit seeking: (1) to compel the Department to conclude that IBT was a plan or, in the alternative, (2) for a declaration that IBT was a plan. We defended on the merits. After a trial in January 1981, the court issued its opinion in August 1981 awarding judgment for the Secretary. IBT has filed a notice of appeal.

3. McCarthy v. Donovan, 05-36-138 (D. Mass)

Plan trustees sued the Department seeking a declaratory judgment that the plan could lawfully deny service credit to participants of a contributing employer which has failed to make contributions to the plan. As part of the litigation, the plan is seeking to have a regulation under §§202 and 203 of Title I declared illegal. Plaintiffs have moved for summary judgment, and we have prepared a cross-motion for summary judgment on behalf of the Secretary of Labor and submitted it to the Department of Justice.

4. Kramer v. Secretary of Labor, 05-48-142 (D.N.J.)

The plaintiff, appearing pro se, has named the Secretary as defendant in a benefits dispute case. He has since agreed to a dismissal.

5. Wachovia Bank v. Donovan, 05-054M-143 (M.D.N.C.)

A notice letter was sent to the Plan Committee, bank trustee, and president of Rex Plastics Co., alleging violations of §§404 and 406 in connection with the acquisition of stock by the ESOP from the president and company at a cost substantially in excess of its price on the market. Settlement negotiations were underway when, on July 11, 1980, the bank trustee filed suit against the Secretary for a declaratory judgment. The Secretary filed counter and cross claims alleging the violations which would have been part of our complaint, had we filed first. Our claims assert losses amounting to more than \$300,000. Discovery is now underway and trial is expected early next year.

6. Peick v. PBGC, 05-23-147 (N.D. Ill.),

Plaintiffs, trustees of Teamsters Union Local 705, and various employer associations, brought this action in federal court against the Pension Benefit Guaranty Corporation, and the Secretaries of Labor and the Treasury, seeking a declaratory judgment that §104 of the Multiemployer Pension Plan Amendments Act of 1980, (MPPAA) which amends various sections of Title IV of ERISA, is unconstitutional. The Secretary has filed a motion to dismiss, alleging that the facts as alleged do not present a case or controversy between plaintiffs and the Secretary.

7. Fresh International Co. v. Secretary of Labor, 05-12-148 (S.D. Cal.)

The Secretaries of Labor and Treasury were joined as defendants in this case which asserts unfair labor practices in the operation of a pension plan. We expect an order dismissing the Secretary to be entered shortly.

8. Hamilton v. Secretary of Labor, 05-47-149 (D.N.H.)

The Secretary was joined as a defendant in this case which alleges ADEA and ERISA violations arising from an employee's discharge by his employer. We have moved to dismiss and understand that our motion recently has been granted.

9. Heneson v. Schmidt, 05-35-151 (D. Md.)

An assignee of a debtor in a state court insolvency proceeding brought this action against the Department and six non-federal defendants seeking a declaration of the rights of the parties under §406 of ERISA. The Secretary removed the case to federal court and filed a motion to dismiss based on the grounds that no claim is stated against the Secretary nor is any relief sought from him.

10. Terson Company, Inc. v. PBGC, et al., 05-23-152 (N.D. Ill.)

We have been joined as defendants with the plan, the Secretary of the Treasury and the PBGC in this action, which challenges the constitutionality of parts of the MPPAA. We have negotiated with the plaintiffs for our voluntary dismissal.

11. Kowalewski v. Schmidt, 05-35-153 (D. Md.)

Two participants filed this suit alleging that the Department knew or should have known about violations of ERISA by two other defendants and failed to act in a timely fashion to prevent or rectify such violations, thereby acting in a "grossly negligent" manner. This case is based upon the same underlying facts as those alleged in Henesen v. Schmidt, supra, number 9, which is currently before the same Judge. The Department has prepared a motion to dismiss the Kowalewski suit on the grounds that plaintiff has failed to state a claim upon which relief can be granted.

12. National Bank of Alaska v. Secretary of Labor, 05-06-154

The National Bank of Alaska has brought suit against the Department seeking to enjoin further investigation by the Department into possible abuses relating to the bank's practices as trustee for numerous employee benefit plans. The matter is pending.

C. LITIGATION AUTHORIZED BUT NOT YET FILED1. Donovan v. DeBiase, 08-51-160 (S.D.N.Y.)

After suit was authorized a letter was sent inviting settlement discussions. We assert violations of §§404 and 406 in connection with a loan made by the plans to the contract administrator of the plans. Settlement discussions are underway.

2. Donovan v. Abercrombie, 08-19-181 (N.D. Ga.)

Litigation has been authorized against plan fiduciaries for selecting the sponsoring union to serve as a provider of services to the plan. The complaint will allege that this decision was in violation of the provisions requiring the plan fiduciaries to act solely in the plan's interest and prudently. The defendants have agreed to enter into a consent decree appointing an independent party to assess the needs of the plan and to select its service providers. In the event that the

independent analyst determines that the plan has lost money as a result of the prior conduct of the trustees, the Department has the right to seek recovery by applying to the court for adjudication of that claim.

3. Donovan v. Woodall, et al., 08-18-183 (S.D. Fla.)

This case, which is the eighth case investigated by the special Miami Pension Task Force, was approved for litigation. The main issue in the case involves the past practice of the trustees in awarding scholarships in disproportionate numbers to children of union officers and other people in specially favored categories at the expense of rank and file participants. Plan fiduciaries have expressed their willingness to enter into a consent decree and negotiations are currently in progress.

4. Donovan v. Edson, et al., 08-82-187 (W.D. Wash.)

Litigation has been authorized with respect to the holding and leasing of non-qualifying employer real property by a profit sharing plan. The response to our invitation to settle the matter has been unsatisfactory and a complaint is to be filed.

5. Donovan v. Barresi, et al., 08-52-189 (E.D.N.Y.)

Suit has been authorized against the trustees of Teamsters Local 918 Pension and Welfare Plans for removal, and to recover plan assets lost as the result of the imprudent purchase of certain whole life insurance and deposit administration contracts through Louis Ostrer from Foundation Life Insurance Company. The suit will challenge the reasonableness of the trustees in selecting Ostrer and relying on Ostrer's advice with respect to the transactions at issue. Settlement negotiations are underway.

6. Donovan v. Meehan, et al., 08-36-191 (D. Mass.)

Litigation has been authorized against the former trustees and a party in interest to this plan. The litigation arises out of a situation where an insurance agent who provided services to the plan, including transmission of plan insurance premiums to the insurance carrier, converted over \$450,000 in plan assets to his own use. Our complaint will allege that the plan trustees violated their

fiduciary duties by failing to implement procedures to insure that the required premiums were paid to the insurance carrier. Our complaint seeks restitution of the amount lost by the plan. The proposed defendants are no longer fiduciaries of the plan.

7. Donovan v. Smith, et al., 08-62-192 (E.D. Penn.)

Litigation has been authorized and letters sent, inviting settlement discussions in connection with our claims that the trustees of five employee benefit plans, a corporate service provider and the owner of the service provider have violated the fiduciary standards and prohibited transactions provisions of ERISA in connection with the plans' purchase of individual whole life policies on behalf of their participants. Settlement negotiations are in progress.

8. Donovan v. Schulman, 08-50-193 (N.D.N.Y.)

Litigation has been authorized and a notice letter sent inviting settlement discussions as to our assertion that the trustee of the Employees' Savings, Profit Sharing and Retirement Fund of the Lee Dyeing Companies has violated the fiduciary standards and prohibited transaction provisions of ERISA by causing the plan to enter into numerous loan arrangements with parties in interest. We expect to enter into a consent decree contemporaneously with the filing of the complaint, resulting in repayment to the plan of nearly \$900,000.

9. Donovan v. Crytzer, 08-64-195 (W.D. Penn.)

The complaint in this case, which is expected to be filed shortly following unsuccessful negotiations, will allege that fiduciaries of a pension plan breached their duties by making substantial, below-market rate loans to a related plan for the construction of a training facility. The complaint will seek recovery for the losses caused by the alleged breaches and the appointment of an investment manager.

10. Donovan v. Jeans, et al., 08-73-196 (N.D. Tex.)

Litigation has been authorized in this case which concerns a violation of the diversification provision of §404(a)(1)(C) of ERISA by the trustees of the First Federal Savings and Loan

Association Pension Plan, due to their investing approximately 97% of total plan assets in first lien residential mortgage loans secured by realty in a limited geographic area. We expect to file our complaint with a consent order shortly.

11. Donovan v. Parson, et al., 08-67-197 (D.N.C.)

Litigation has been authorized in this case against trustees of certain ILA-Waterfront Employers plans who allegedly failed to collect contributions from two sponsoring local unions of the ILA which obligated themselves to make contributions on behalf of their own employees who participated in the plan. Settlement discussions are in progress.

12. Donovan v. King, 08-70-199, (E.D. Tenn.)

Suit has been authorized against the trustees of the Mason-Dixon Lines Pension Plan alleging violations of sections 404 and 406 arising from loans by the plan to officers of the plan sponsor and to related companies. Settlement negotiations have not been fruitful and we expect to file our complaint in the near future.

13. Donovan v. Nave, et al., 08-23-200, (N.D. Ill.)

Suit has been authorized against the trustees of the Chicago Truck Drivers Pension Plan alleging ERISA 404 and 406 violations arising from the provision of administrative services by the union to the plan. A letter has been sent inviting settlement discussions.

D. AMICUS CURIAE CASES

1. Kaiser Steel Corp. v. Mullins, No. 80-1345 (Sup.Ct.)
(PBSD #37-16-105)

This case presents two issues: (1) whether Kaiser can allege as a defense to a suit to collect delinquent contributions that the clause requiring contributions violates the antitrust and labor laws and (2) whether the plan trustees' suit to collect

the contributions arises under ERISA. We participated with the NLRB and the DOJ, Antitrust Division, to formulate a unified government position which was presented to the court by the Solicitor General. The Solicitor General accepted our position that Kaiser could not raise that defense and that the case arose under ERISA.

2. Heppenstall Co. v. Murphy, No. 80-1909 (Sup.Ct.)
(PBSD #37-62-106)

A petition for certiorari was filed seeking to review a decision holding that an employer could be liable to pay vested benefits to participants upon termination where the employer made a promise to pay such benefits. We participated in the preparation of a brief opposing certiorari filed by the Solicitor General.

3. Leigh v. Engle, No. 78-3799 (N.D. Ill.)
(PBSD #02-23-1720)

On November 18, 1981, we filed a memorandum, amicus curiae, setting forth our views on the legal standards to be applied to a case generally alleging the use of pension plan assets to aid the efforts of fiduciaries and their associates in purchasing control over three publicly-held companies.

ERISA CASES AND MATTERS

PART II

INVESTIGATIVE FILES OPEN AND PENDING IN PBSO (December 11, 1981)

1. Laborers Holiday and Vacation Fund - Lansing; Laborers Holiday and Vacation Fund - Detroit (18-37-102)

These matters involve union dues checkoff issues similar to those which were recently resolved in our favor in Donovan v. Davis. We will return these matters to PWBP with the recommendation that voluntary compliance be sought along the lines established in the Davis case.

2. Retail Clerks Local 1407 (18-64-219)

This matter involves the receipt of excessive fees by a service provider to the plan. The plan trustees have asserted claims against the service provider designed to recover the fees. The trustees have now recovered \$100,000 from the service provider and commissioned an expert to review and make proposals respecting the plan's service providing arrangements. Based on the steps that the plan has taken over the past several months, we expect to close the matter.

3. Cement Masons Local 514 (18-37-239)

The issue presented in this investigation is the same as the one successfully litigated in Donovan v. Davis. The plan has now agreed to voluntarily comply and the matter will be closed on that basis.

4. Meatcutters and Butcher Workmen (18-43-490)

This is one of several matters in which the primary allegation contained in the ROI was that the plan paid possibly excessive sums for administrative services. PWBP has advised us that another investigation of a separate Meatcutters plan involving the same service provider would be referred to us and might substantiate a pattern of abuse. That separate investigation is expected to be referred by December 30, 1981.

5. Riggers Trust Fund (18-23-495)

This matter involved a series of prohibited transactions arising out of the sale of a building and certain equipment to parties in interest. The matter was referred back with our concurrence that PWBP seek voluntary compliance. Subsequently, the matter was reopened because the plan had threatened to sue the Department unless the letters sent to the plan were retracted. Since it now appears that a suit will not be brought against the Department, we intend to close our file.

6. Local 144 Nursing Home Funds (18-51-506)

In late 1980, Judge Duffy of the Southern District of New York, who was presiding over private litigation involving the funds, requested that the Department conduct an investigation into the operations of these plans to determine whether plan fiduciaries had breached their duties under ERISA. The request stemmed from allegations that: (1) plan fiduciaries had failed to collect more than \$10 million in delinquent contributions; and (2) union and employer appointed trustees had independently sought to use the plans to benefit their respective plan sponsors. Over the past year attorneys from this office have participated in conducting administrative depositions and a related investigation into the plans' activities. In part as a result of this effort, most of the previously identified problems appear to have been resolved satisfactorily. For that reason, it appears that litigation will not be necessary.

7. United Castings (18-15-510)

This matter involves the purchase by plan trustees of employer stock. The trustees apparently converted an existing pension plan which held liquid assets into an ESOP. The employer corporation, which was closely held, subsequently went bankrupt. This matter is under consideration.

8. Gilbert Clinic (02-60-1977; 2280)

This matter involved a series of prohibited transactions between the plan and plan sponsor officials. Subsequently, a private suit was brought and the private parties entered into a consent decree purporting to resolve the controversy. Our comments were solicited by the parties. In response we sent a letter stating that the consent decree did not fully resolve the outstanding issues.

9. ESOP of Almont, Inc. (18-13-529)

The primary allegations contained in the ROI involve the purchase of qualifying employer securities by the ESOP at book value. The ROI does not contain sufficient information to establish that the purchase price was imprudently established or was less than fair market value. We expect to recommend that this matter be closed.

10. American State Bank Employees (18-73-530)

ROI presents question of whether bank trustee's investment in certificates of deposit issued by bank constitutes prohibited transaction.

11. Sambo's Inc. (18-11-534)

The primary allegation contained in the ROI involves the plan trustees' purchase on the open market of qualifying employer securities on behalf of the eligible individual account plan. It is alleged that the trustees bought at a time when they should have known that the value of the stock would decline. This matter is under consideration.

12. Delta Dental Care (18-39-564)

ROI alleges that failure of insurance company, which also serves as plan administrator, to return money to plan resulting from favorable experience adjustment constituted breach of fiduciary duty. It appears likely that matter will be returned for PWBP to seek voluntary compliance.

13. Genesco Retirement Plan (18-71-565)

This matter involves: (1) the sale by the plan to the plan sponsor of real property; and (2) advances by the plan to a corporation owned by the plan to maintain property owned by the corporation which property is under lease to the plan sponsor. These issues present questions of fair market value and the application of various prohibited transaction rules and are under consideration.

14. Gilmore Steel Company Retirement Plan (18-61-574)

This matter involves the issues of a possible prohibited transaction arising from a contribution-in-kind and a lease of plan real property to the sponsoring employer. The matter is under consideration.

15. Enterprise Aluminum (18-19-616)

ROI presents question whether, when a welfare plan provides benefits on an insured basis, the plan sponsor or the participants are entitled to receive cash rebates when paid by insurance carrier. Issue remains under consideration.

16. Yankee, Inc. (18-47-630)

ROI alleges that plan fiduciary which purchased a series of limited partnership interests in real estate partnerships breached its fiduciary duties. The general partner who was the same in each of these partnerships committed a fraud against the partnerships, resulting in their bankruptcy and a substantial loss to the plan. The case presents difficult issues because of the manner in which the plan fiduciary, who also invested a substantial amount of his personal assets, was victimized. Because of those considerations and because the plan fiduciary made a commitment to make the plan whole, we are unlikely to recommend litigation.

17. Cooper Tire and Rubber (18-58-631)

The primary allegation contained in the ROI is that the plan sponsor paid less than fair market value when it purchased real property from the plan in a transaction that would otherwise appear to be exempted from section 406 by section 414(c). We expect to return this matter for voluntary compliance.

18. Kaiser Steel Group (18-11-644)

This matter presents the same issues as presented in Enterprise Aluminum, No. 15 above.

19. IBEW Local 666 Benefit Trust Fund (18-79-654)

This matter involves a loan by the plan to a company which is wholly owned by the sponsoring union. It appears that, with respect to the key transaction, it is not actionable because of the statute of limitations. Whether or not other actionable violations have occurred is still under consideration.

20. Health and Welfare Plans, Inc. (18-37-668)

This matter involves allegations of excessive payments by plans for administrative services. Pursuant to our request for additional investigation an administrative deposition of the provider of administrative services to the plans has been scheduled for the week of December 14. Our analysis will be deferred until after the completion of the deposition.

21. S.J. Groves and Sons Co. (18-39-670)

This matter presents the same issues as are presented in Enterprise Aluminum, No. 15 above.

22. ISC Financial Corporation Thrift Plan (18-43-677)

The primary allegation contained in the ROI involves the prudence of the acquisition on the open market of qualifying employer securities by an individual account plan. The ROI asserts that the plan trustees should have known that the value of the stock would decline. This matter is under consideration.

23. MBFA Foundation Pension Plan (18-74-678)

The matter involves numerous loans by the plan to companies affiliated with the plan sponsor and a transfer of plan real estate to an affiliate of the sponsor. Most of the claims which we might raise on behalf of the plan have been asserted in bankruptcy proceedings involving the affiliated companies; the bankruptcy proceedings have resulted in a 70% recovery by the plans. We are considering what further action, if any, by the Department would be appropriate.

24. Dental Insurance Plan/Beech Air Craft (18-29-680)

This matter involves the return of dental insurance premium experience refunds to the plan sponsor. This matter is under consideration.

25. Southern Saw Service, Inc. ESOP (18-19-681)

The primary allegation contained in the ROI is that the fiduciaries of the ESOP improperly valued shares of qualifying employer securities purchased from the owner of the plan sponsor. The fiduciaries apparently relied on an appraisal of the stock by an independent appraisal firm. This matter is under consideration.

26. Plumbers and Steamfitters Local 150 Plans (18-19-682)

This matter involves allegations of excessive and unnecessary administrative fees paid by the plan to a service provider for the maintenance of records of inactive participants. This matter is under consideration.

ERISA CASES AND MATTERS

PART III

CLOSED MATTERSOPEN ON JANUARY 1, 1981 OR OPENED DURING 19811. Teamsters Local 299 Severance Plan (18-37-220)

We concurred that the trustees' decision to fund the plan's death benefits through expensive whole life insurance was imprudent and that prohibited transactions occurred in arrangements to purchase insurance. Because the ERISA issues are presented in a clearer fashion in other active litigation and because this plan has been terminated since 1976 and the bulk of its assets have been distributed, we recommended against litigation. We also referred recently-surfaced allegations of kickbacks to the Department of Justice and suggested that PWBP consider additional investigation into those allegations.

2. Morris Chevrolet Inc., Profit Sharing Retirement Plan (18-60-249)

This matter involved issues of potential prohibited transactions which were largely resolved in the context of exemption applications filed with DOL. As to the one remaining issue, we were unable to state a legal opinion in the absence of additional factual investigation.

3. Pipe Trades Apprentice Trust for San Mateo County (18-11-274)

This plan acquired a parcel of land in 1969 and received about \$280,000 through assessments on union members in the period 1969 to 1972, apparently with the understanding that the local union would receive a 25% interest in the land and building constructed thereon. The conveyance of the 25% interest to the union, however, was not completed until June 1975. Because the question whether this 1975 conveyance constituted a prohibited transaction turned entirely on whether it had been made pursuant to a pre-ERISA binding commitment (a question of state law interpretation) and in the absence of apparent abuse, we recommended against enforcement action.

4. Stewards Security (18-11-296)

The subject of the ROI was a proposed transaction which, if entered into, would have involved violations of ERISA. The plan advised us that, as a result of investigation, it had determined not to go forward with the transaction.

5. Smart Chevrolet Retirement Plan (18-10-300)

The ROI primarily alleged that loans by the plan to a finance company for the purpose of financing the sale of automobiles by the plan sponsor were prohibited. The matter was returned after an application for exemption was made and denied by the Department with the suggestion that voluntary compliance be pursued.

6. Southern California Pipe Trades Trust Fund (18-12C-304)

We concluded that payment of benefits to employees of the union, who are entitled to receive benefits under the governing trust documents even though the union makes no contributions to the plan, does not violate ERISA.

7. Plumbers and Pipefitters Local 719 Health and Welfare Fund (18-18-317)

This matter was one of the Miami Task Force investigations, raising the question of whether the purchase of individual whole life insurance policies to fund benefits was prudent. Because this issue was squarely presently in several ongoing cases and because the amount of money involved was relatively small, we recommended against litigation.

✓ 8. Tapers Industry Insurance Fund (18-51-325)

This matter involved escrowing by the trustees of a local Taft-Hartley welfare plan of employer contributions designated to provide pension benefits. These contributions were being held pending formal establishment of a local pension plan. We were advised that such a plan was in the process of being established, and referred the matter back to OE for confirmation that the contributions had in fact been remitted to a properly constituted pension plan, and if not to seek voluntary compliance.

9. ICN Laboratories (18-61-329)

ROI disclosed questionable settlement of a claim for back rent that plan had against the plan sponsor and the subsequent sale of the property to sponsor. The investigation also focused on the fact that the plan sponsor had defaulted on both agreements after having declared bankruptcy. Although technical violations were apparent from these facts, other factors militated against enforcement including (1) the apparent good faith of the trustees; and (b) the existence of a pending lawsuit by the trustees against the sponsor seeking full recovery. Accordingly, it was recommended that the matter be closed.

10. Pabick Employees' Profit Sharing Plan (18-42-330)

This matter involved potential prohibited transactions. Since these transactions were apparently exempted by promulgation of the DOL class exemption relating to customer notes, we returned the file to PWBP.

11. Ironworkers Local 272 Annuity Pay Plan (18-18-335)

The ROI concluded that the expenditure of about \$100,000 (between 20% and 45% of plan assets) was imprudent. We concurred that the expenditures for legal services, which were made in connection with four lawsuits and one arbitration proceeding arising generally from the Plan's dealings with Louis Ostrer and entities affiliated with him, appeared excessive. However, because the Plan is essentially terminated and because of the difficulty in establishing which of the legal expenses might have been unnecessary, we recommended that no litigation be brought.

12. Kennebec River Paper and Pulp Co., Inc., Hourly Employees Pension Plan (18-34-336)

This case involved the question of whether and under what circumstances a corporate parent may be held liable for ERISA violations committed by its defunct subsidiary with respect to the subsidiary's pension plan. We concurred with the PWBP recommendation that the matter be closed.

13. ERB Plastics Inc., Profit Sharing Plan (18-19-340)

The ROI primarily asserted that a lease of plan property to the sponsor was imprudent and prohibited under section 406(a). Other less significant violations, including a plan loan which was due to be paid off shortly after the conclusion of the investigation, were also identified in the ROI. The matter was returned with a suggestion that voluntary compliance efforts be undertaken and, if unsuccessful, that the matter be returned to PBSO.

14. Retirement Plan of Korvettes, Inc. (18-52-346)

This case involved denial of vesting credit to participants. The IRS also investigated this violation and secured an agreement from the plan remedying the violation. The plan then terminated and PBGC is pursuing a remedy.

15. I.A.M. Pension Plan (Sal De Geisco) (18-48-351)

This case involved denial of benefits to participants whose employers fail to make contributions to the plan. We recommended that the case be referred to the IRS which is primarily responsible in matters of this kind.

16. National Maritime Union Rivers Pension Plan (18-42-352)

ROI raised issue of whether plan provision which operated to deny benefit to participant of multiemployer plan at the time of mandatory retirement violated ERISA. The matter was returned setting forth conclusion that plan provision in question did not comply with section 203 of Title I and that matter should be referred to IRS which has primary interpretative responsibility for that provision.

17. New York - New Jersey Teamsters Project (18-48-358)

This matter was opened as a project to provide legal services to FWBP in connection with an investigation it was conducting. No investigative report was submitted and therefore litigation was never considered.

✓ 18. San Jose Medical Clinic Profit Sharing Plan (18-11-361)

The plan, which owned about 40% of the interest in a partnership which owned the realty and equipment used in the plan sponsor's business, exchanged the plan's interest in the partnership and a note from a second partnership. We concurred that the plan's interest in the first partnership was undervalued by \$275,000 due to use of an out of date appraisal to value that partnership's realty. Although concluding that fiduciary violations occurred, we suggested that effort to secure voluntary compliance or other future action be coordinated with IRS, since IRS was already considering an excise tax remedy. We noted, with respect to the desirability of litigation, that about 75% of the plan's assets are held in the accounts of doctors who, as partners in the second partnership, benefited from the transaction.

19. Mort Hall Ford, Inc. Employees Profit Sharing Plan and Trust (18-74-368)

This case involved the purchase of customer notes by a profit-sharing plan. We drafted a detailed letter requesting that the plan provide further information to enable the Department to determine whether the purchases came within a class exemption for customer notes. After receipt of a letter from the plan trustees claiming to be covered by the class exemption, PWBP closed the file.

20. Evans Electrical Construction Company Profit Sharing Plan (18-43-370)

This case involved a questionable purchase of stock of the plan sponsor by a profit-sharing plan authorized to purchase such stock. The purchase was handled by the plan's bank trustee which was also a major creditor of the sponsor. We recommended that the plan be allowed to retain the bank as trustee if its investment discretion to purchase sponsor stock were removed. We also recommended that further investigation be undertaken to establish whether the stock purchase was for adequate consideration.

21. Casa Ford Profit Sharing and Defined Benefit Plan (18-73-372)

We concurred with PWBP that past ERISA violations regarding certain loans appeared to have been remedied and recommended that the matter be closed.

22. Painters District Council #4 (18-53-377)

ROI asserted possible violations arising out of the failure of plan fiduciaries to protect against tax foreclosure of building owned by plan. Because that problem had been resolved, no further action was recommended. We suggested that PWBP consider informing the plan fiduciaries that the continued ownership of the building, which was a non-productive asset, could present a violation of their fiduciary duties.

23. Gust Georges Employee Benefit Plan (18-64-380)

The ROI identified technical prohibited transactions. The matter was returned with suggestion that voluntary compliance be pursued.

✓ 24. Employee Stock Ownership Plan of American Steel Building Company, Inc. (18-74-385)

We concurred that ERISA violations apparently existed where the trustees of an ESOP set apparently arbitrary values at which the plan would acquire employer stock. Plan losses were apparently small, and the significant legal issues were being actively litigated in other cases. Therefore we recommended against litigation but suggested efforts to obtain voluntary compliance or to refer to the IRS of the prohibited transaction involved in one stock acquisition.

✓ 25. Decker Steel Company Profit Sharing Retirement Plan (18-38-387)

This matter involved allegations that plan fiduciaries had failed to collect amounts owing on a pre-ERISA loan. There was no evidence that, had trustees been more vigilant, they would have collected the amounts owed. The matter was returned for voluntary compliance.

26. A.R.K. Ramos Foundry and Standard Engraving Plans (18-60-390; 18-60-541)

An attorney and trustee for these plans pled guilty to state criminal charges for embezzling about \$70,000 from the plans and was ordered to make restitution. Because the co-fiduciaries reported the matter to local authorities, were requested by the prosecutor to suspend legal action until the end of the criminal proceedings, and then made good-faith, although unsuccessful, efforts to obtain restitution from the embezzler, we recommended that litigation not be brought against them.

✓ 27. Atlas Sheet Metal Profit Sharing Trust (18-61-393)

The ROI principally alleged that payments made by the plan to the sponsor to cancel a lease of property between the plan and the sponsor were imprudent and constituted prohibited transactions. Other lesser prohibited transactions, arising primarily out of the purchase by the plan of notes from parties in interest, were also alleged. The matter was returned with a suggestion that voluntary compliance efforts be undertaken and, if unsuccessful, that the matter be returned to PBSA.

28. J.A. Riggs Tractor (18-09-395)

The ROI concluded that a contribution in kind by plan sponsor in lieu of a cash contribution constituted a prohibited transaction. A letter was sent to plan stating that in the Department's view the transaction was prohibited.

29. Fourco Glass Co. (18-83-402)

The ROI disclosed that purchase of plan sponsor stock on behalf of the plan by its bank trustee was imprudent and constituted a prohibited transaction. Although the matter was at one time considered to be appropriate for litigation, it was dropped after negotiations with the defendants and with officials of the Economic Development Administration because of a statute of limitations defense.

30. Local 8 - Burns Detective Agency Welfare Plan (18-82-403)

The ROI contended that plan benefits may have been distributed to ineligible participants. Because the potential violations turned largely on interpretations of contractual language and did not present significant ERISA issues and because they involved relatively small amounts of money and a plan which has been terminated, as a practical matter, since late 1974, we recommended that the file be closed.

31. Harvey Feilen Meat Company ESOP (18-28-405)

We concurred that the plan's acquisition of sponsor stock in connection with mergers and recapitalization involving the sponsor appeared to present violations of ERISA sections 404 and 406. Because the existence of violations and plan losses turns entirely on the issue of stock valuation as to which IRS has particular expertise, we recommended that the matters be referred to IRS for possible imposition of the excise tax.

32. Oklahoma Aerotronics, Inc., Employee Stock Ownership Plan (18-58-407)

This case involved a contribution of sponsor stock to the plan and the plan's purchase of a small amount of stock from officers of the sponsor. We concurred with FWBP that the contribution issue was primarily the concern of the IRS, and the stock purchases were too small to justify the expense of hiring an expert to determine whether the price paid was excessive.

33. Local 976 ILA Pension Plan (18-48-424)

A local union official receives \$370 per week for his union work and \$380 per week for serving as administrator of two plans. Since he is the only non-clerical employee of the two plans and is responsible for their daily operations, and his total annual compensation from the union and both plans, \$39,000, is not obviously excessive, we concluded that success was unlikely in litigation based on the theory that his compensation violated ERISA's ban on plans paying compensation to full-time union employees.

34. Laborers Trust Funds of Northern California (18-11-431)

This matter involved payment from the plans to local unions and a Laborers District Council for administrative services, billed by the labor organizations on the basis of time estimates rather than on documentation of services performed. Each year the plan paid a portion of the sums billed up to a limit set in the collective bargaining agreements which generally authorized such payments for services in collecting contributions owed to the plans. We concluded that these payments presented likely ERISA violations similar to those alleged in other DOL litigation. Given the difficulty in establishing the reasonable value of services which could have been lawfully compensated under ERISA, we recommended, since the payments had ceased after the initiation of the DOL investigation, against further enforcement action.

✓ 35. J.T. Chapman Co., Pension Plan and ESOP (18-73-436)

We concurred with PWBP that voluntary compliance be sought to undo prohibited loans between the plans and their sponsors or fiduciaries. We also concurred that the issue whether ESOP fiduciaries properly valued stock according to a formula set forth in the plan document (which had received a favorable IRS determination letter) but which did not appear likely to result in a fair market valuation be referred to IRS.

✓ 36. Bale Finance Company Plans (12-09-145)

This matter involves the investment of a substantial portion of plan assets in installment sale contracts generated in the sale of new cars by Bale Chevrolet, a party in interest to the plan, in violation of section 404 and 406. The investment does not appear to meet all of the conditions of the Department's class exemption PTE 79-9. We have recommended that PWBP seek voluntary compliance.

37. Iron Workers District Council of New England Pension Fund (18-36-438)

A bank which is a plan fiduciary received tender solicitation fees for tendering the plan's shares in a takeover fight. In accordance with industry practice and apparent SEC direction, the Bank distributed these fees to brokers with which it does business, rather than to the plan. We recommend further coordination with the SEC and reconsideration of the Department's enforcement posture.

38. East Texas S&L Association PS Plan (18-75-439)

The primary allegation contained in the ROI is that the plan trustees have violated section 404(a)(1)(C) by investing 80% of plan assets in loans secured by real estate located in a single area of Texas. We prepared a draft letter seeking voluntary compliance.

39. Anthracite Health and Welfare Fund (18-62-442)

This case involved loans from the union sponsor to the plan and the propriety of the plan's procedures for auditing employer contributions and making eligibility determinations. We closed the file after receipt of a copy of a letter from PWBP to the plan advising it that, because of corrective action taken by the plan, PWBP was closing its file.

40. Dillard Department Stores, Inc., Employees Pension Plan (18-09-444)

We concluded that allocations and distributions of benefits made when the plan terminated in 1976 appeared to have been contrary to provisions in the plan documents and contrary to representations made to IRS and PBGC, both of which agencies must pass on the termination. We recommended that the matter be referred to IRS for re-examination of its favorable determination, and such a referral was made.

41. New England Teamsters and Trucking Industry Pension Fund (Pesaturo) (18-36-445)

This matter concerned the plan's policy of refusing participants pension benefit accruals for hours as to which employers had failed to remit contributions owed to the plan. We stated that further action was unnecessary since the legality of the plan's policy was already at issue in a suit brought by the plan against the Secretary of Labor.

42. Local Union 880 Painters Display Industry Pension Fund (18-39-446)

This case involved misappropriation of a small sum of money from a plan. The guilty party was convicted of embezzlement. PWBP requested referral of the matter back to it to determine whether any restitution could be obtained.

43. Particle Size Technology, Inc., Retirement Plan
(18-48-449)

ROI asserted violations based on loans by plan to plan sponsor. Because of stated willingness of breaching fiduciaries to make plan whole, voluntary compliance was recommended.

44. District 50 National Pension Fund (18-64-454)

This case involved the expulsion of a contributing employer from a multiemployer plan and the resulting cancellation of some participants' past service credits. We concluded that no violation other than a failure to follow plan documents was present, and recommended that the participants be informed of their right to bring action for failing to follow the plan.

✓ 45. Krafft Company Profit Sharing Plan (18-79-455)

This matter involved a series of prohibited loans and extensions of credit to plan sponsor by plan. The matter was returned to the program with the recommendation that voluntary compliance be sought.

✓ 46. Austin Mortgage and Trust Company Plan (18-73-457)

The ROI alleged violations stemming from the plan loans to plan sponsor and the purchase of mortgage notes held by the sponsor. Because of the absence of loss and the prior correction of most of the prohibited transactions, the matter was returned with the suggestion that the remaining transactions be corrected through voluntary compliance.

47. IAM National Pension Plan (18-16-459)

This case involved plan amendments cancelling or denying vesting credit for certain participants. We recommended that the case be referred to the IRS.

ln 48. Borton, Inc., and Continental Slip Form Builders, Inc.
Employees Profit Sharing Plan (18-29-460)

This Plan owns 100% of the stock in its sponsor. We concurred that ERISA violations had occurred in extensions of credit between the plan and three trustees resulting from their sale of sponsor stock. We also concluded that violations had taken place because plan trustees, acting on behalf of the plan as sole sponsor shareholder, had voted on matters which directly affect their compensation as corporate officials. In view of the fact that the sponsor stock appeared to have been a favorable investment for the plan, we concurred with PWBP that enforcement action was not appropriate.

49. Crawford Fitting Company Profit Sharing Trust
(18-57-461)

After discussions with PWBP, it was agreed that this matter was not a potential subject for litigation and the file was returned to PWBP.

50. New Orleans Sheet Metal Workers Retirement Pension Fund
(18-32-462)

This case involves a loan by a pension plan to a subsidiary organization of the plan's union sponsor. In concurrence with the recommendation of PWBP, we closed the case upon full repayment of the loan.

51. Financial Services Industry Insurance Trust Fund
(18-36-463)

ROI presented issue whether purchase by plan administrator of insurance on behalf of plans being administered through an affiliate of plan administrator was prohibited transaction not exempted by Prohibited Transaction Exemption 77-9. The matter was returned to PWBP for reconsideration because:

(1) principally technical violations of the prohibited transactions provisions were involved; (2) there was no basis to conclude on the facts presented that losses had occurred; and (3) the question of whether these plans were covered by ERISA was an unanticipated, troublesome issue in the Fifth Circuit.

52. Pension Plan of Yellow Cab Company of Pittsburgh
(18-64-466)

We concluded that this matter involved a potential violation of ERISA's funding standards by an employer who failed to contribute certain monies to a plan. We recommended that the matter be referred to IRS which is responsible for enforcing the funding standards.

53. Pacific Architects and Engineers, Inc., ESOP
(18-12C-470)

We concurred that litigation not be brought in this matter involving the plan's pre-ERISA acquisition of sponsor stock and a continuing extension of credit in connection with the acquisition. Since the price paid by the plan for the stock was based on an independent appraisal on which it was not obviously unreasonable to rely, we were not prepared to assert that the extension of credit constituted a prohibited transaction. We concurred that a transfer of property which repaid the extension of credit created a prohibited transaction but that litigation was not warranted.

✓ 54. A.R. Kramer Company Profit Sharing Plan (18-37-475)

ROI primarily alleged that plan had renewed a pre-ERISA loan to its plan sponsor in the amount of \$50,000 in violation of the prohibited transaction provisions. Because of the nature of the violation and the relatively insignificant amount involved, the matter was returned with the suggestion that it be referred to the IRS for imposition of an excise tax.

55. Local 46 [Laundry Workers] Welfare Plan (18-23-477)

The local union, which administers the plan, received over \$300,000 over a three year period as compensation for services to the plan, about \$200,000 of which was accounted for as clerical and office expenses. The remaining \$124,000 was paid to reimburse the union, on the advice of the plan's accountants, for services allegedly performed by union business agents. Sufficient records were not maintained. We concurred that the plan's union trustees, who are also union officials, violated section 406(b) by authorizing these transactions and that, in the absence of records documenting the services, the \$124,000 payments constituted prohibited transactions. We recommended that voluntary compliance be sought to have an independent person analyze what services are necessary for the plan, whether the union should provide any services, and, if so, what compensation should be paid.

56. Territory Wholesale Supply Company (08-53-165)
(18-53-478)

We had previously agreed to undertake litigation in this matter which involved: (1) certain loans prohibited under ERISA and (2) the investment, on margin, of a substantial percentage of plan assets in a single issue of stock. After meeting with the prospective defendants, we verified that the prohibited transactions had been corrected, that plan assets were not being managed by an insurance company, and that any losses were minimal and presented no risk of harm to funding of plan benefits. Based on these new developments, we recommended against litigation.

57. Cousins Properties Profit Sharing Plan (18-19-480)

Although this plan sustained losses due to a speculative realty investment involving a subsidiary of the plan sponsor, we recommended against litigation because it appeared that most of the losses had already occurred prior to ERISA and it was not clear that the fiduciaries' post-ERISA actions were imprudent or involved the plan in a prohibited transaction.

58. Bills Institutional Commissary PS Plan (18-41-482)

This matter involves exchange of real estate, a lease and other transactions between the plan and companies affiliated with the plan sponsor which involve difficult questions under sections 408, 414 and 407(d). We concurred with the suggestion of PWBP that a letter be sent demanding voluntary compliance.

59. National Sales Inc., Employee Profit Sharing Plan (18-41-484)

The ROI concluded that ERISA violations had occurred in the leasing of two properties, which together constituted over 80% of the plan's assets, to a company partly owned by plan fiduciaries. We concluded that one of the lease presented a clear prohibited transaction but that the other lease was probably exempt as a renewal of a pre-ERISA lease. We also stated that we were prepared to support PWBP's taking the position, in the context of seeking voluntary compliance, that the plan was holding non-qualifying employer real property and that the plan's assets were not adequately diversified.

60. Gumprecht Trucking Co. Plan (18-23-487)

The ROI primarily alleged that a series of loans by the plan to its sponsor and related officials were imprudent and prohibited. Because the State of Illinois had secured agreement from the company president to make the plan whole over a period of time in lieu of criminal prosecution, we returned the matter to PWBP with a series of suggested options including the option to sue the breaching fiduciaries as originally proposed. PWBP decided not to pursue litigation.

61. Local 9 I.B.E.W. H&W, Vacation and Holiday Funds (18-23-486)

This matter involves a transfer of funds between related plans in violation of sections 404 and 406. As requested by PWBP we drafted a demand letter to be sent to the plan trustee.

62. Savannah ILA Plans (18-19-489)

The primary allegation contained in the ROI is that the plan trustees failed to properly collect employer contributions for union employees covered by the plans. The trustees have relied in part on the opinion given in an arbitration in which these issues were presented. We have returned this matter to PWBP with the recommendation that the trustees be notified that they should comply with the law (according to our view) in the future.

63. Teamsters Local 639 Welfare Fund; Iron Workers No. 5; Affiliated Teamsters Allied Pension Plan; Painters Pension Trust Fund, (18-16-492, 18-16-505, 18-35-508, 18-35-509, 18-16-516)

These matters principally involved the allegation that Alfred Bell and entities associated with him caused these plans to pay them excessive compensation for services. Two of these plans were involved in a private suit, Brink v. Dalesio, in which the Court found Bell liable for fiduciary violations. We recommended against DOL litigation as to the plans not involved in Brink primarily because: (1) prospective relief was not necessary since Bell had retired from plan administration and the plans had changed to less expensive arrangements and (2) it appeared that Bell's assets would be exhausted by recovery on judgments for the two plans involved in Brink.

64. Jacksonville ILA Longshoremen's Pension Welfare and Vacation/Holiday Plans, (18-17M-493)

This matter involves an allegation that the trustees of these plans failed to properly apportion employer contributions and expenses among the plans in violation of section 406 and the terms of the plans and engaged in inter-fund loans. We have returned this matter to PWBP for efforts to obtain voluntary compliance.

65. Retail Store Employees Union, Drug and Mercantile Employees Welfare Fund, (18-37-494)

The ROI disclosed possible violations arising out of the rental of office space by the union sponsor. We concurred with the analysis of PWBP and recommended that voluntary compliance efforts be undertaken.

66. CRC - Crose International, Inc. (18-74-498)

This matter involves allegations that the plan trustees have improperly valued assets of the plan, resulting in overpayments to participants who had cashed out and a shortfall for participants who remain to be paid. An attempt to secure voluntary compliance was recommended.

67. Northwest Operating Engineers Trust Fund, (18-82-500)

ROI raised question of legality of bank trustee's investing large proportion of plan assets in certificate of deposit issued by bank. After discussions with Administrator, we were informed that PWBP was disinclined to pursue potential claim of lack of diversification.

68. Weyher Construction Co. Profit Sharing Plan
(18-77-501A)

The ROI contended that a sale by this plan to a trust of which the beneficial interest is owned by various parties in interest to the plan was prohibited by §406. We concluded that the actual sale was not prohibited due to the transitional exemption in ERISA §414(c)(3) but that an extension of credit as part of the sale constituted a separate violation of §406. Because of the routine nature of the violation, we recommended that the matter be referred to IRS for imposition of its excise tax on prohibited transactions.

✓ 69. Eastern Airlines Variable Benefit Pension Plan
(02-52-2629)

This matter involved allegations that plan fiduciaries had violated section 404(a)(1)(D) by encroaching upon the discretion of the plan's investment managers. In addition evidence was presented that at least one of the plan fiduciaries has inappropriately used his position as a collective bargaining representative in the conduct of plan affairs. We prepared correspondence by which the Administrator notified the plan sponsors and the plan fiduciaries of the breaches we had identified and the corrective action we thought appropriate.

✓ 70. Amalgamated Dept. Store and Retail Employees Insurance Fund, (18-37-507)

This matter involved allegations that the plan fiduciaries of a Detroit based plan had expended unnecessary and unreasonable amounts of money in connection with annual trustees' meetings held in various resort areas around the country. The matter was favorably resolved by an agreement of the plan fiduciaries to restore approximately \$50,000 to the plan and to set up procedures to avoid unnecessary future expenditures.

71. Lincoln Mfg. Co., Inc. Profit Sharing and Retirement Plan, (18-23-511)

The ROI established that a deceased plan trustee, in conspiracy with an accountant, had stolen \$250,000 from the plan without the knowledge of his brother, the plan's co-trustee. We concurred that the deceased trustee had violated ERISA, the accountant had unlawfully participated in the breach of trust, and the surviving trustee was probably imprudent in not adequately monitoring his brother's conduct. However, in view of the fact that the surviving trustee had subsequently recovered \$165,000 in litigation against his brother's estate and expected to recoup the balance of the losses in pending litigation against the accountant, we concluded that litigation by the Department against the surviving trustee was not warranted.

72. Teamsters Local 945 Pension and Welfare Funds (18-48-514)

The primary allegations contained in the ROI relate to apparently imprudent loans and a lease entered into by plan trustees on behalf of the plan. Because any causes of action based on the lease or loans would face statute of limitations problems and because the two principal union trustees were convicted under the racketeering statute and thus became ineligible for further service as fiduciaries, we recommended no further enforcement action.

73. Riggers Local Union 575 Vacation and Health Fund (18-37-520)

We concurred in a recommendation that a voluntary compliance letter be sent seeking to undo a disbursal of \$70,000 from this plan to an apprenticeship plan which covers overlapping, but not identical, participants. Notwithstanding a plan provision that surplus monies not needed to pay benefits under this plan could be applied to benefit employees in the industry, we

concluded that the transfer was not solely in the interests of the participants of this plan and that an individual who served as a trustee of both plans also acted with a divided loyalty prohibited by section 406(b). In light of plan counsel's expressed willingness to discuss undoing of the transaction, voluntary compliance appeared appropriate.

74. California Brewing Industry Employment Security Fund
(18-11-522)

This matter involved a transfer of \$380,000 from this supplemental unemployment benefit fund to a related vacation plan pursuant to a plan provision which provides for such discretionary transfers where the monies are not needed to pay benefits under the SUB fund. We concluded that such discretionary transfers may violate ERISA §§404 and 406, although the transfer might be permissible under ERISA if made pursuant to a predetermined formula set forth in the governing plan documents or collective bargaining agreements. The action was taken upon advice of counsel, on actuarial advice and after receiving a favorable IRS ruling. We recommended closing this case.

75. International Production, Service and Sales Welfare Fund, (18-52-524)

The ROI concluded that plan trustees were imprudent in their post-ERISA actions involving two defaulted pre-ERISA loans. After conducting supplementary administrative depositions, we concluded that the evidence of post-ERISA imprudence or losses caused by post-ERISA actions was not strong enough to warrant litigation. We also concluded that we lacked sufficient information to determine whether the plan made excessive payments to doctors and dentists but suggested that a letter seeking voluntary compliance might be appropriate.

76. Shamrock Foods Co., Retirement Plan, (18-08-525)

This plan purchased a \$1 million keyman life insurance policy on the life of the plan sponsor's president for the purpose of funding a \$700,000 unfunded liability in the event of his

death. The question presented was whether the plan trustees were imprudent in paying premiums on the policy to the extent that payment under the policy could result in an overfunding of the plan, possibly to the benefit of the plan sponsor. The insurance purchase was expressly designed as an investment to fund plan benefits. Because we were not willing to take the position that plan fiduciaries violate ERISA simply by making decisions which may result in overfunding, we recommended that no further action be taken.

77. Jacksonville ILA Warehouseman's Plans, (18-17M-526)

This matter involves the same issues as those involved in the Jacksonville ILA Longshoremen's plans (number 18-17M-493) discussed above. It has also been returned for efforts to obtain voluntary compliance.

78. South Atlantic ILA/GAI Fund, (18-17-527)

This matter involves certain structural deficiencies of a guaranteed annual income plan. It also involves a prohibited transaction involving the employment by the plan of a spouse of a trustee. However it could not be determined from the ROI whether the transaction was exempted by section 408(b). We have returned this for PWBP to seek voluntary compliance.

79. Cement Masons Apprenticeship and Training Fund, (18-11-531)

Pursuant to the plan document, most of the contributions to this plan have been transferred to a Joint Apprenticeship Training Committee (JATC), with an equal number of employer and union members; the JATC is intended to carry out the actual training functions provided for under the plan. We concurred that the monies held by the JATC were plan assets which must be held in trust and recommended that voluntary compliance be sought.

80. Buffalo Carpenters Pension Plan and Supplemental Unemployment Benefits and Health Care Fund, (18-53-532)

The pension plan involved here, in 1969 and 1970, loaned \$207,000 to a non-profit corporation owned by the plans' co-sponsoring local union to finance construction of a building which is occupied by the plans. We concurred that, because the terms do not reflect arm's-length bargaining and the loan has always been in default, the loan is prohibited under section 406 and the plan trustees' failure to make collection attempts violated section 404. Because it appeared, however, that collection attempts would likely not have been successful, we concurred in PWPB's recommendation against litigation.

81. Tampa Maritime Association ILA Plans, (18-17-538)

The ROI in this case suggests that violations of section 404 occurred as a result of the plan accepting contributions for participants employed by the plan and the union, which contributions are calculated on a basis different from that applicable to other participants. We concluded that the evidence contained in the ROI did not support a finding of ERISA violations.

82. Joint Industry Board, (18-51-540)

This was a request for an opinion as to whether an entity known as the Plumbing Industry Board was a covered employee benefit plan. The Board had been set up to collect contributions from employers and to allocate the money collected among several related plans. We concluded that it was unnecessary to resolve the question presented because there was no doubt that the monies collected by the Board were "plan assets" which had to be handled in a manner consistent with the fiduciary responsibility provisions of ERISA.

✓ 83. American Federation of Unions Local 102 H&W and Vacation Funds, (18-32-543)

This matter involves a prohibited loan, pursuit by the plan of various claims against service providers to the plan, and compliance with various structural requirements of ERISA. As a

result of the investigation, the plan trustees undertook certain remedial actions. Accordingly we recommended that a letter be sent setting forth the Department's conclusions and that the area office monitor the promised reforms.

84. Alaska Carpenters Pension Trust, (18-06-547)

This matter principally involved plan loans which presented technical prohibited transactions. Because the loans were likely to be resolved, either through an exemption application pending before DOL or an excise tax proceeding being pursued by IRS, we recommended against litigation.

85. Lovable Company Profit Sharing and Pension Trust, (18-19-548)

ROI concluded that trustees had acted imprudently in connection with their choice of remedies against borrowers in default on a pre-ERISA loan made by the plan. We declined enforcement action on the grounds that the evidence was insufficient to establish imprudence.

86. ASP Realty, Inc., Employees' Profit Sharing Plan, (18-56-550)

This matter concerned the legality under ERISA of contributions to the plan by the plan sponsor of mortgages and contracts for deed. In the absence of loss to the plan, and consistent with prevailing PWBP direction on enforcement in "contributions in kind" cases, we declined enforcement action.

87. UAW Staff Pension Plan, (18-37-551)

This matter involves allegations that the plan fiduciaries have made below-market real estate and personal loans to plan participants in violation of the fiduciary responsibility provisions. After analysis and discussions with the Administrator, it was decided that voluntary compliance efforts would be undertaken by PWBP.

88. Southeast ILA Plans (Miami), (18-18-556)

This matter involves issues similar to those described above in connection with the Jacksonville ILA Longshoremen's plans, number 18-17M-493. As with the Jacksonville plans we have returned the matter for voluntary compliance.

89. Babcock and Wilcox Pension Plan, (65-134)

This case raised the question whether a plan could legally offset from pension payments to participants amounts previously paid to these participants as a termination allowance upon their termination of service. We concluded that the practice was inconsistent with the provisions of the plan itself and thus presented a violation of §404(a)(1)(D). We did not give an opinion on the legality of this practice under §203 in view of the fact that the IRS has primary responsibility for interpretation of this provision. We suggested that PWBP might wish to inform the IRS of the practice in question.

90. First National Bank of Jacksonville and Associates Profit Sharing and Pension Plans; First State Bank of Rusk Pension Plan, (18-73-557)

We concurred that these related plans had been involved in the following ERISA violations: (1) a prohibited transaction when one of the fiduciaries decided whether a loan applicant to one of the sponsor banks should receive a loan from that bank or from one of the plans; (2) a prohibited transaction arising from the purchase of a note from one plan by the plan sponsor for the apparent purpose of avoiding a loss to the plan; (3) prohibited loans, now repaid, from one plan sponsor to its plan, and (4) nondiversification in investing over 73% of one plan's assets in mortgages secured by land within a small geographical area. In the absence of any apparent loss, we

recommended that voluntary compliance be sought to achieve future diversification and avoid future prohibited transactions.

91. Consolidated Edison Employees Mutual Aid Society
(18-51-560)

The ROI asserted that the transfer of \$2.7 million in 1966 for the benefit of the plan sponsor constituted an outstanding loan after 1975 in violation of the prohibited transaction provisions. The matter was returned setting forth the view that the plan had not retained a legal interest in the \$2.7 million and thus there was no violation.

92. Austin Company and Unaka Company Profit Sharing Plans
(18-70-561)

✓ We generally concurred with PWBP that a series of transactions between the plans of these related companies and entities affiliated with the principals in these companies violated ERISA and suggested that voluntary compliance to remedy the violations be attempted.

93. San Francisco Culinary Supplemental Disability Fund,
(18-11-562)

This matter involved an agreement by collective bargaining parties to revise a welfare benefit plan prospectively and also to refund certain payments to employers out of plan assets. After the trustees initially declined to proceed with the arrangement, the matter was the subject of private litigation. We filed a brief, amicus curiae, in the appeal, urging reversal of the district court's enforcement of an arbitration award on the grounds that it contravened ERISA. The appeal was dismissed when the litigants agreed to follow the arbitrator's award. We then returned the ROI to PWBP for a determination as to whether to take further action.

✓ 94. Laurel Bancshares Employees' Profit Sharing Plan,
(18-43-569)

Our opinion was requested as to the legality of transactions concerning a shopping center, purchased by the plan in 1972 which has constituted about 90% of the plan's assets. The

investment violated ERISA's diversification requirement. The evidence of a prohibited transaction did not appear strong. Post-ERISA expenditures in connection with the investment did not appear to have caused losses and may have been necessary to preserve the pre-ERISA investment. In view of the plan fiduciaries' expressed willingness to divest the plan of the investment, we recommended that DOL advise the trustees to pursue such divestiture.

95. Delta Iron Division, (18-32-571)

ROI alleged that lease of plan property to plan sponsor constituted prohibited transaction. The matter was declined for litigation on the grounds that there was no evidence that the amount of the lease payments was unreasonable and it was likely the lease would be exempted from the prohibition of §406(a) by operation of §414(c).

96. Security Life and Accident Pension Plan, (61-182)

This matter presented the question whether a partnership partly owned by the plan and set up for the purpose of acting as nominee of the plan in conducting plan transactions presented a violation of the requirement of holding plan assets in trust within the meaning of §403. Because this issue was related to those to be addressed in the plan assets regulation under consideration, the matter was referred back with the suggestion that it be deferred until the regulation was finalized.

97. Ralph A. Veon, Inc., Pension Plan, (18-64-575)

This matter primarily concerned a now-bankrupt sponsor's failure to fund a pension plan. Since the PBGC had intervened in a plan termination proceeding in the bankruptcy court, further DOL action on this aspect was unnecessary. We concluded that the evidence did not support an allegation that a \$93,000 bank account, transferred in connection with a 1977 change in ownership of the plan sponsor and a related

corporation, had been earmarked to establish a pension plan; therefore, we concluded that no violation existed as to the sponsor's use of this account which it apparently owned.

✓ 98. Palm Mortuary Employees Retirement Plan,
(18-46-577)

About 90% of this plan's assets are invested in a mortuary and office property contributed to the plan pre-ERISA by the plan sponsor and leased back to the sponsor. In addition to presenting a clear violation of ERISA's diversification requirement, the property is non-qualifying employer realproperty which the plan cannot hold under ERISA §407 but which could lawfully be sold to the plan sponsor. An exemption request for such a sale involving a 100% mortgage to be held by the plan (thus creating a new prohibited transaction) was denied in 1979. Because the sponsor has expressed a willingness to restructure the proposed sale, we recommended that a letter be sent seeking such voluntary compliance and also advising the trustees of their duties to collect what appeared to be other relatively small amounts owing to the plan.

✓ 99. Skogman Const. Co. Profit Sharing Plan, (18-27-578)

We concurred that this plan had been involved in a number of small prohibited transactions in which plan assets had been invested in ways which, although apparently not harmful to the plan, were intended to benefit the sponsor and its subsidiaries; as to these, we suggested that voluntary compliance be sought prior to consideration of litigation. We recommended that apparent misrepresentations to DOL in a prohibited transaction exemption application be referred to the Department of Justice.

100. Construction Laborers Trust Funds for So. Cal.,
(18-12C-579)

This matter involves allegations of prohibited transactions and nondiversification of plan assets invested in real estate mortgages. This was one of several investigations involving

these issues. After discussions with PWBP, it was agreed that this matter would be referred back to PWBP for consideration as to which case or cases should be recommended for enforcement.

101. Nabisco Plan for Pensions, (61-183)

The principal question presented in this matter was whether renewed leases of property between the plan and the plan sponsor were exempted by the transitional rules of §414(c)(2) and (3). We returned the matter, concurring with the general analysis of PWBP, and suggesting what additional facts would be required to be developed through further investigation in order to determine whether actionable violations had occurred.

102. Ohio Carpenters Health and Welfare Plan, (18-57-582)

The principal issue in this matter involves the plan's relationship with CCA, a non-profit corporation formed to collect contributions owed by employers to this and other Carpenters-affiliated plans and entities. CCA is controlled and governed by the union trustees of the plan. We concurred that the plan trustees were imprudent in entering into an arrangement through which CCA is permitted, as compensation for its services, to retain short-term investment interest earned on monies collected on behalf of the plan. We also agreed that the union trustees violated ERISA section 406(b) by virtue of acting with dual interests in approving this arrangement. We concurred in the sending of a letter pointing out the violations and seeking corrective action.

103. ILA Pension Welfare and Vacation Plans for North Carolina Area Ports, (18-54-583)

This matter involves issues similar to those described above in the Savannah ILA plans, number 18-19-481 above. Because of the involvement of the IRS in these plans we have recommended that PWBP coordinate with that agency.

- ✓ 104. Jim Wilson Company ESOP and Pension Plan; Homestead Distributing Company ESOP and Pension Plan, (18-42-587)

We concurred that a series of loans from these plans to their related plan sponsors constituted prohibited transactions. We recommended that voluntary compliance be attempted and that, if that is unsuccessful, the matter either be returned to us for litigation or referred to IRS for imposition of the excise tax.

105. Firestone Tire and Rubber Co. Plans, (18-57-589)

ROI asserted that \$4.5 million loan by plan was imprudent and constitute prohibited transaction. The matter was declined for litigation based on conclusion that the loan was not to a party in interest and that there was insufficient evidence to conclude that the transaction was imprudent.

- ✓ 106. Brevard Engineering Co. Pension and Profit Sharing Plans, (18-18-592)

We concurred that violations of ERISA §404 and 406 had occurred in loans from these plans to their sponsor and to two plan trustees. We recommended that DOL, rather than bringing its own litigation, either attempt to obtain voluntary compliance or refer the matter to IRS which we understood was undertaking its own enforcement action.

- ✓ 107. Bayview Federal Savings PS Plans, (18-11-593)

This case involved prohibited transactions. After receipt of the ROI we learned that the trustees had agreed to correct the transactions. Accordingly, we returned the file to PWBP to monitor the voluntary compliance.

108. Golden State Mutual Life Retirement Plan,
(18-12C-594)

This matter involved the issue of whether the assets of a plan maintained by an insurance company may, in the absence of an insurance contract with the plan, be held in the company's general account or must be held separately in trust. Because IRS has qualified plans which hold such funds in their general accounts we recommended against enforcement action until the Department reached a coordinated position with IRS.

✓ 109. Monarch Tile Mfg., Inc. ESOP, (18-73-595)

This matter involved three separate transactions in which plan properties, leased pre-ERISA to the plan sponsor, were first the subject of new post-ERISA leases and then were sold to the plan sponsor. We concurred that voluntary compliance be sought as to two properties which were sold at below market value (thus creating a prohibited transaction) but recommended no action with respect to the third property which was sold for an amount apparently in excess of fair market value.

✓ 110. Michigan Conference of Teamsters Health and Welfare Fund, (18-37-596)

We concurred with FWBP that the maintenance of a discretionary supplemental benefit coverage did not violate ERISA §404; we also agreed that the trustees should be advised that a plan practice regarding coordination of benefits should be incorporated in the plan documents, but recommended that litigation on this issue not be brought. The ROI also asserted that a prohibited transaction arose when the plan's claims processor sub-leased office space owned by the plan. In the absence of information that the lease was other than an ordinary commercial transaction or that the plan trustee knew that the leased property would be sub-leased to the claims

processing firm, we could not conclude that this involved a §406 violation.

111. Associated Industries of Alabama, Group Trust and Group Health Benefits Trust, (18-01-597)

This matter presented a question of ERISA coverage of a so-called multiple employer trust (MET). The amounts of money involved were small and effective DOL litigation would have been difficult because of adverse precedent in the Fifth Circuit (which we are seeking to reverse or limit in the Dillingham litigation). We recommended against any enforcement action until a decision is received in Dillingham (which has recently been argued on appeal in the newly-created Eleventh Circuit).

112. Highland Hospital Employees' Savings and Investment Plan, (18-73-598)

This matter involved allegations that a penalty provision contained in a guaranteed investment contract (GIC) sold to a plan by an insurance company involved fiduciary violations by the insurance company which offered the GIC. After discussions with the Administrator we returned the file to PWBP because the fiduciary violations presented were not considered attractive for litigation at this time.

113. International Cold Storage, Inc. Employees Profit Sharing Trust, (18-29-602)

This case involved a loan from the plan to the plan sponsor. We concluded that the loan came within the transitional rules (§414) of ERISA and would not be prohibited until July 1, 1984.

114. Bassett Furniture Industries Retirement Plan, (18-79-608)

We concurred that a voluntary compliance letter be sent to plan fiduciaries who entered into a long-term insurance contract without waiting to receive a formal actuary's report projecting

the plan's cash needs. As a result of entry into the contract, the plan experienced a cash shortage and had to borrow money from its sponsor to pay benefits, thus creating a prohibited transaction.

115. Employee Plans of Challenge - Cook Bros., Inc.
(18-12-611)

This matter involves prohibited transactions. After receipt of the file we were advised that IRS was prepared to impose an excise tax and that we should return the file to the area office for review by the IRS. The file has been returned to PWBP.

116. Western Pacific Employee Medical Corp., (18-11-614)

This matter involved allegations of the trustees' failure to invest some plan assets and investment of other assets in low yield investments. We concurred in PWBP suggestion that voluntary compliance be sought.

117. Southern California Retail Clerks Welfare and Pension Trust Funds, (18-12-614A)

Pursuant to a decision of an arbitrator, these plans pay compensation, computed according to a formula determined through collective bargaining, to local unions for administrative services provided. Although the ROI contended that the compensation was unreasonable, we concluded that the evidence was not sufficient to prove ERISA violations, partly in light of the fact that compensation paid to the unions is lower than costs incurred by similar plans. We concurred with PWBP's suggestion that the results of an internal plan audit of the arrangements be evaluated and the trustees advised of their fiduciary duties.

118. Retail Store Employees Local 1262 H&W Plans, (18-48-615)

This matter involves the issue of the reasonableness of compensation paid to an administrative service provider to the plan. Because plan trustees have obtained through litigation a

substantial recovery from the service provider, we recommended no further enforcement action.

119. Ullenberg Corporation Profit Sharing Plan, (18-70-617)

PWBP sought our concurrence that voluntary compliance be sought as to a number of transactions involving the use of most of the plan's assets in ways which benefited officials of the plan sponsor. We were unable to conclude that these transactions, some of which originated pre-ERISA and some of which involved assets solely held in the directed accounts of the sponsor officials (and thus affect only the benefits of those individuals) presented ERISA violations. Since the ongoing transactions presented primarily potential issues of tax abuse, we recommended that the matter be referred to IRS.

120. Fort Vancouver Plywood Co., Profit Sharing Plan, (18-82-620)

We agreed with PWBP that loans from this plan to its sponsor appeared to have been made pursuant to a binding pre-ERISA commitment. Since the loan terms seemed reasonable (and thus the loans appear exempted by the section 414 transition rule), and in view of the fact that the trustees have expressed an intent to phase out these loans within the period permitted by section 414, we recommended against enforcement action.

121. Westchester Teamsters Severance Pay Fund, (18-51-621)

The ROI contended that the merger of this plan with a related plan violated ERISA. Since IRS had approved the merger and there did not appear to be appreciable losses to participants and beneficiaries, we recommended against further action.

122. Fondo de Pensiones y Retiro de Los Empleados del Banco de Ponce, (18-65-623)

The ROI principally contended that plan loans to participants did not satisfy the statutory exemption for participant loans because they were not made available equally to all employees.

We were unable to concur that the evidence showed a pattern of lending to highly compensated employees or company officials. We concluded that the interest rates on the loans appeared lower than the "reasonable rate" required by the statute and suggested a letter pointing out that violations had occurred for that reason and seeking voluntary compliance.

123. A. J. Rod Profit Sharing Plan, (18-14-625)

We concurred that voluntary compliance be sought as to: (1) the non-diversification resulting from investment of virtually all of the plan's assets in non-income producing land and (2) the plan's enforcement of a "bad boy" forfeiture clause made unlawful by ERISA.

124. Ross Industries ESOP, (18-80-626)

This matter involved allegations that plan trustees paid more than fair market value in purchasing employer stock and assumed on behalf of the plan debts of the sponsor in exchange for employer stock. We have recommended that this matter be referred to the IRS for imposition of the excise tax.

125. Rueter and Zenor Company Employees Trust, (18-28-627)

We concurred that the investment of virtually all of the plan's assets in three farms in the same location in Iowa violated ERISA's diversification requirement. Since the plan had benefited from these investments, we recommended against litigation but suggested efforts to achieve prospective diversification.

126. William, Abbey & Sells, M.D.'s Profit Sharing Plan, (18-18-628)

This matter involved prohibited transactions arising from the sale of plan property, at apparently less than fair market value, to a partnership of which plan trustees were partners,

and a lease of other plan property to a corporation in which plan trustees were principals. Since the violations were straightforward and experience suggests that this type of case principally presents issues of tax abuse, (since the accounts of the plan fiduciaries typically constitute a major portion of plan assets), we recommended referral to IRS for imposition of the excise tax.

127. Citizens and Southern National Bank Pension and Profit Sharing Plans, (18-18-632)

The sponsor bank receives fees for managing the plans assets; we concluded that the facts did not establish that these fees were excessive or in violation of ERISA. We also concluded that it was unclear who was responsible for paying for actuarial services for the pension plan, and we were thus unwilling to assert that the sponsor, not the plan, should have paid those fees.

128. Suburban Teamsters of Northern Illinois Pension and Welfare Plans, (18-23-633)

We concurred that the receipt by the plan's administrator and consultant of brokerage commissions from insurance carriers which he recommended to the plans constituted prohibited transactions. Since the investigation did not establish that this individual's total compensation was clearly excessive, we recommended against litigation but suggested that the matters might be handled through voluntary compliance or referred to the IRS for consideration of the excise tax remedy.

129. Republic Steel Corp. Supplemental Unemployment Benefit Plan, (18-57-634)

Pursuant to a trust agreement, the employer's obligation to make contributions to this plan is contingent on participants' becoming unemployed. Potential contributions to the plan are carried on the employer's books as contingent liabilities. We gave our opinion that, because the employer had no obligation to contribute these amounts until the contingency was removed, the amounts were not "plan assets" and need not be held in trust.

130. Chaney, Inc. Money Purchase Pension Plan,
(18-35-637)

ROI asserted that the subject plan did not have an adequate bond in violation of the bonding provisions. Because of the nature of the violations and the number of participants in the plan (3), we declined enforcement litigation.

131. The Sieg Companies Pension Plan, (18-28-639)

This case involved substantial loans from the plan to parties in interest. We recommended against litigation because we understood that the IRS proposed to assess the excise tax and because of possible statute of limitation problems.

132. United Food and Commercial Workers Union (District Union No. 657) and Employers Health and Welfare Trust Fund of Florida, (18-8-640)

The ROI showed that plan trustees terminated an existing insurance arrangement and selected a new insurer which provided benefits on a different basis. The question presented was whether the new type of arrangement was inherently imprudent. In the absence of expert opinion as to the prudence of the new type of contract, we were unable to conclude that a violation could be demonstrated. We concurred with PWBP's recommendation that, in the absence of evidence of past abuses, prospective voluntary compliance be sought regarding the trustees' failure to account for reimbursement of their own expenses in attending educational conferences.

133. Profit Sharing Thrift Plan and Trust Agreement of Farnsworth Realty and Development, (18-08-642)

Our opinion was sought as to whether the contribution by an employer of real estate in lieu of cash to satisfy an employer's contribution obligation to plan constituted a prohibited transaction within the meaning of section 406(a). Consistent with the decision of the PWBP Administrator not to

initiate litigation on this kind of issue, which is a likely subject of a future regulation, the matter was returned to PWBP. Our referral noted the apparent lack of diversification of plan assets resulting from the holding of approximately 80% of plan assets in undeveloped real estate and suggested that voluntary compliance be pursued on that issue.

134. All-State Employees Trust Profit Sharing Plan,
(18-32-643)

We concurred that ERISA violations occurred but concluded that the losses which might have been remedied through DOL litigation had already been remedied through private litigation.

135. Pioneer Employees Profit Sharing and Retirement Plan,
(18-33-646)

The ROI principally alleged that plans sponsored by a bank had been engaged in the purchase and sale of securities issued by the bank so as to maintain a stable market for these securities in violation of sections 404(a), 406(a)(1)(D) and 406(b)(2). The matter was returned with a recommendation that no action be taken regarding the "market-maker" issue but with our concurrence to pursue voluntary compliance as to the remaining issues.

136. Horace Longacre Profit Sharing Plan, (18-62-647)

This matter involves the plan's purchase of employer stock from an officer of the sponsor on credit extended to the plan by the purchaser. The plan is an eligible individual account plan. The issue is complicated by the recapitalization of the company after the purchase, possible statute of limitation problems, and the fact that the terms of the credit extended to the plan were very favorable to the plan. We recommended that this file be closed.

137. Film Transit, Inc., Profit Sharing Plan, (18-72-648)

We concurred with PWBP that prohibited transactions occurred in connection with loans from this plan to a company with substantial interrelation with the plan sponsor. We also concurred that voluntary compliance be sought before considering litigation.

138. Houchens Industries, Inc. Employees Trust, (18-31-649)

This matter involves prohibited transactions including the plan's purchase of notes and mortgages held by the plan sponsor. We concurred with PWBP's suggestion of pursuing voluntary compliance or referral to IRS.

139. Tyler Corporation Master Retirement Income Plan (61-195)

In this case 99 percent of a plan's assets were invested in a commingled trust. A legal opinion was sought as to the applicability of §406(a)(1)(A) and (E) and Prohibited Transaction Exemption No. 80-57, which exempts certain transactions involving bank collective investment funds. We returned the file with an opinion that the plan's investment in the trust was exempt under §408(b)(3) but that the trust's investments in notes issued by the trustee bank may be prohibited under §406(a)(1)(A) and (B) if the conditions of statutory exemption provided in section 408(b)(4) had not been met.

140. Sheet Metal Workers Local 9, (61-196)

This matter presented the question whether a system of payroll deductions resulting in "vacation share accounts" in a Federal Credit Union constituted an employee welfare benefit plan covered by ERISA. To support a PWBP Notice Letter regarding coverage and compliance related thereto, we provided a legal opinion that under the circumstances the arrangement constituted a plan covered under ERISA.

141. Rohr Employees Pension Plan, (18-11-650)

The ROI presented the question whether a contribution in kind by the plan sponsor in lieu of a cash contribution constituted a prohibited transaction. The matter was closed based on a policy determination by the PWBP Administrator with respect to litigation of this issue.

142. Fuller and Co. Employee's Profit Sharing Plan,
(18-13-651)

The ROI alleged that plan's interest in 52 real estate partnerships, amounting to 46% of plan's assets, violated the prohibition against nondiversification. The matter was returned with a recommendation against litigation on the grounds that the issue presented did not constitute a clear case for enforcement. A possible statute of limitations problem was also noted.

143. Bay State Milling Co. ESOP, (18-36-652)

The ROI concluded that the plan had paid excessive consideration for stock issued by the plan sponsor. Because the IRS was actively pursuing this matter and there is other litigation brought by the Secretary raising similar issues, the matter was returned with a recommendation that no further action be taken unless the IRS does not follow through on its proceeding.

144. Mellon Bank, (18-64-653)

This matter involves real estate investments made by the bank pre-ERISA as trustee for various pension plans. After discussions with PWBP, it was agreed that the file would be returned to PWBP for further investigation and re-evaluation.

145. Lincoln Bank South, (18-23-655)

Two plan participants have complained that they were terminated from their employment just prior to year end and that the termination was motivated by the employer's desire to prevent them from obtaining their share of the employers contribution to the plan for that year. We concluded that on the facts it was not likely a court would conclude that there had been a violation of section 510.

146. Charles F. Smith and Sons, Inc. Stock Bonus Plan
(18-41-656)

The ROI alleged that plan fiduciaries had breached their duties by imprudently investing plan assets in plan sponsor stock. Because the facts of the asserted violations were generally reported in annual reports filed with the Department of Labor more than three years before the matter had been referred for possible litigation, we declined to act because of the problems presented by the statute of limitations.

147. Sheetmetal Workers Local 17 Vacation Fund, (18-36-657)

This matter was not a referral for enforcement action but a request for assistance in the negotiation of voluntary compliance. We participated in negotiations with counsel for the respondents; an arrangement for voluntary compliance was reached; and the matter has been returned to the area office for monitoring.

148. Altomose Enterprises, Ltd., Profit Sharing Plan, (18-63-659)

The ROI recommended that litigation be brought since most of this plan's assets were invested in transactions involving the plan sponsor or its subsidiaries. We concluded that certain party-in-interest loans were probably exempted by the section 414 transition rule for pre-ERISA loans, except for one post-ERISA loan which had already been repaid. As to the plan's continuing involvement in a partnership established with a plan sponsor subsidiary, we were unable to conclude that ERISA violations existed or that losses were likely to result. In view of these conclusions and the fact that the two plan sponsor officials who initiated these investments had removed themselves as trustees and installed a bank trustee, we recommended against litigation.

149. Bank of the South Pension and Profit Sharing Plan, (18-19-660)

This matter presented the question whether a contribution of real property to a plan by a plan sponsor is a prohibited transaction under ERISA. Based on discussions with the

Administrator, PWBP, it was determined that enforcement would not be initiated and the file was returned to PWBP.

150. Mississippi Chemical Company Pension Plan,
(18-41-661)

This plan holds stock of its sponsor, a cooperative, and, like other stockholders, receives annual "capital equity credits" redeemable at the sponsor's option. The question presented was whether holding these credits resulted in a prohibited extension of credit. We concluded not, and also concluded that the credit closely resembled preferred stock and thus could constitute qualifying employer securities in which the plan could lawfully invest up to 10% of its assets.

151. Engler, Schwechter, Zoghter and Mann (ESM),
(18-23-662)

ESM is in the business of soliciting small employers to establish pension plans for which ESM then provides administrative services. ESM also promotes the sale to these plans of insurance products as investments and informs the plan trustees that brokerage fees which ESM receives as a result of such sales will be offset to decrease the fees which ESM receives for its other administrative services. The questions presented were whether ESM was a fiduciary to its 2,000 small plan clients and whether ESM had violated ERISA by causing these plans to buy its insurance products which are poor investments. We were unable to conclude that ESM is a plan fiduciary, and a lawsuit against the many individual trustees of these plans did not seem appropriate. As to each of the 11 plans investigated thus far by DOL, the trustees have taken steps to review their investments as a result of the investigations. In some cases, plans have received refunds from ESM; in others, litigation is pending between ESM and plan trustees. We recommended that DOL broaden its investigative efforts and attempt to obtain similar voluntary compliance, where appropriate, as to other ESM-administered plans.

152. Service Local 189 Welfare Plan, (18-23-663)

This matter was referred to us principally for a legal opinion as to whether one plan or multiple plans were involved. We concluded that one plan was involved and agreed to PWBP's

recommendation that voluntary compliance be attempted as to various small issues involving the plan's loss of interest income and plan expenses.

153. First Federal Savings & Loan of Anchorage,
(18-06-663(A))

Two financial institutions which were parties in interest to the plan sold loans from their own portfolios to the plan in violation of § 06. Because the IRS was aware of the transactions and its excise tax remedy appeared likely to be as effective as DOL litigation we recommended against litigation.

154. Lou-Mac Transfer, Inc. Pension and Profit Sharing Plans, (18-18-664)

We concurred that plan trustees violated ERISA by failing to collect rental payments owed under a lease of plan property to the plans' sponsor. Since the plans were terminated in 1975, we recommended that the matter be referred back to IRS (which had asked for our determination as to whether prohibited transactions had occurred) for possible imposition of the excise tax. We recommended that allegations that plan trustees retained for themselves certain rental payments to the plans be referred to the Department of Justice for consideration of criminal charges.

155. L. S. Good & Co., (18-83-665)

After selling certain retail stores to a bona fide purchaser under an arrangement by which the seller only remained liable for pension benefits of store employees the seller went bankrupt and discontinued pension payments. The buyer then undertook to make certain payments on a voluntary basis. We recommended against further action principally because the seller was in bankruptcy.

156. Publix Super Markets Profit Sharing Plan,
(18-18-666)

The ROI concluded that the plan, which had entered into a series of pre-ERISA realty leases involving the plan sponsor, was undervaluing its realty and was receiving less than fair rental payments under the leases. We concluded that the facts did not support the ROI's conclusions and recommended against litigation.

157. Ludwig Honold Manufacturing Co. Salaried Employees Pension Plan, (61-205)

This case presented the question whether certain post-ERISA acquisitions by a plan of employer securities pursuant to a 1970 contract were prohibited. Although we concluded that the acquisition violated §407(a) because the plan at the time of the acquisition had more than 90% of its assets invested in employer securities and employer real property, we did not recommend enforcement action because of potential statute of limitations defenses.

158. Minneapolis - St. Paul Family Housing Fund,
(18-39-667)

Certain construction industry plans were considering investments intended to stimulate construction but which promised below-market investment returns. After the Administrator, PWBP, advised the plans that such investments might violate ERISA, the plans decided not to make the investments.

✓ 159. Illinois Healthcare Association Employee Benefit Plan, (18-25-669)

We concurred with PWBP's conclusion that a firm which administered a "multiple employer trust" (MET) had paid itself excessive administrative fees from the assets of the several plans which participate in the MET. However, we recommended against litigation because this MET was terminated and because the past mismanagement was the subject of ongoing private litigation. Since PWBP had learned that the MET administrator was operating in other states, we recommended that investigative efforts focus on those operations.

✓ 160. PECA - IBEW Education Annuity and Pension Plans,
(18-21-673; 18-21-676)

We recommended that no action be taken on certain potential prohibited transactions which had resulted in no, or de minimis, losses to the plans. We concurred that voluntary compliance be sought as to one plan's purchase of expensive cars for use by certain employees, failure of one plan to recapture the full amount of a rent increase from other plans and the union, and the use of plan's monies for non-plan purposes such as travel and a luau. As to internal dissension between union and employer trustees which has interfered with plan business, we concurred that no action be taken pending disposition of private litigation as to this matter. In subsequent discussions with PWBP, we concurred in their proposal to conduct further investigation respecting the prudence of the purchase of a \$1.2 million parcel of real estate.

151. IBEW Local 86 Pension Plan, (18-53-674)

The ROI concluded that plan trustees had sacrificed investment income by investing in a mortgage account which finances only construction projects which use union-only labor. We agreed that such conduct would violate ERISA but concluded that the facts did not show that the investment return was inferior. Therefore, we recommended against litigation on these facts.

162. Reliable Life Insurance Co. Retirement Plan,
(18-42-675)

This matter was referred solely because the plan investigated is related to a plan that is the subject of the subpoena enforcement action, styled Donovan v. Shaw, now pending in the Eighth Circuit. No enforcement was recommended and the matter was closed.

163. Cullum Companies, Inc., and Affiliated Companies
Profit Sharing Plan, (18-73-679)

Our opinion was requested as to the interpretation of ERISA section 407(d)(3)(B) relating to a plan's holding of qualifying employer securities. We concluded that either of two interpretations could be adopted by DOL but that, in the absence of DOL regulations, enforcement action was not appropriate.

Form 5500 Department of the Treasury Internal Revenue Service Pension and Welfare Benefit Programs Pension Benefits Guaranty Corporation For the calendar plan year 1980 or fiscal plan year beginning _____, 1980 and ending _____	Annual Return/Report of Employee Benefit Plan (With 100 or more participants) This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6057(b) and 6058(a) of the Internal Revenue Code, referred to as the Code.	1980 Amended ☐ This Form is Open to Public Inspection , 19
---	--	--

Type or print in ink all entries on the form, schedules, and attachments. If an item does not apply enter "N/A". File the original.

► **Keogh (H.R. 10) plans with fewer than 100 participants and with at least one owner-employee participant do not file this form. File Form 5500-K instead.**

► **Other pension benefit plans and certain welfare benefit plans with fewer than 100 participants do not file this form. File Form 5500-C instead.**

► **Church plans (not electing coverage under section 410(d) of the Code) and governmental plans do not file this form. File Form 5500-G instead.**

► **Welfare benefit plans with 100 or more participants complete only items 1 through 16 and item 22.**

► **Pension benefit plans, unless otherwise accepted, complete all items. Annuity and custodial account arrangements of certain exempt organizations and individual retirement account trusts of employers complete only items 1 through 6, 9 and 10.**

► **Plan number—Your 3 digit plan number must be entered in item 5(c); see instruction 5(c) for explanation of "plan number."**

1 (a) Name of plan sponsor (employer if for a single employer plan), Joint, Board of Trustees, Southern Nevada Culinary and Bartenders Pension Trust Address (number and street) <u>1850 E. Sahara Ave., Suite 220</u> City or town, State and ZIP code <u>Las Vegas, NV 89104</u>	1 (b) Employer identification number <u>8816016617</u> 1 (c) Telephone number of sponsor <u>(702) 369-0000</u> 1 (d) If plan year changed since last return/report check here ☐
2 (a) Name of plan administrator (if other than plan sponsor) <u>Same as sponsor</u> Address (number and street) City or town, State and ZIP code	2 (e) Business code number <u>7012</u> 2 (b) Administrator's employer identification no. <u>N/A</u> 2 (c) Telephone number of administrator <u>(N/A)</u>

3 Name, address and identification number of plan sponsor and/or plan administrator as they appeared on the last return/report filed for this plan if not the same as in 1 or 2 above: (a) Sponsor Same

(b) Administrator Same

4 Check appropriate box to indicate the type of plan entity (check only one box):

(a) ☐ Single-employer plan (c) ☒ Multiemployer plan

(b) ☐ Plan of controlled group of corporations (d) ☐ Multiple-employer-collectively-bargained plan

(e) ☐ Multiple-employer plan (other) (f) ☐ Group insurance arrangement (of welfare plans)

5 (a) (i) Name of plan <u>Southern Nevada Culinary and Bartenders Pension Trust</u> (ii) Check if name of plan changed since last return/report ☐	5 (b) Effective date of plan <u>12-21-71</u> 5 (c) Enter three digit plan number <u>0</u> <u>0</u> <u>1</u>
---	---

6 Check at least one item in (a) or (b) and applicable items in (c):

(a) **Welfare benefit plan:** (i) ☐ Health insurance (ii) ☐ Life insurance (iii) ☐ Supplemental unemployment

(iv) ☐ Other (specify) _____

(b) **Pension benefit plan:**

(i) **Defined benefit plan—(Indicate type of defined benefit plan below):**
 (A) ☐ Fixed benefit (B) ☐ Unit benefit (C) ☐ Flat benefit (D) ☒ Other (specify) Hours worked and years of service

(ii) **Defined contribution plan—(Indicate type of defined contribution plan below):**
 (A) ☐ Profit-sharing (B) ☐ Stock bonus (C) ☐ Target benefit (D) ☐ Other money purchase

(E) ☐ Other (specify) _____

(iii) ☐ Defined benefit plan with benefits based partly on balance of separate account of participant (section 414(k) of the Code)

(iv) ☐ Annuity arrangement of a certain exempt organization (section 403(b)(1) of the Code)

(v) ☐ Custodial account for regulated investment company stock (section 403(b)(7) of the Code)

(vi) ☐ Trust treated as an individual retirement account (section 408(c) of the Code)

(vii) ☐ Other (specify) _____

Under penalty of perjury and other penalties set forth in the instructions, I declare that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Date _____ **Signature of employer/plan sponsor** _____

Date _____ **Signature of plan administrator** _____

Form **5558**
(Rev. March 1, 1981)
Department of the Treasury
Internal Revenue Service

Application for Extension of Time to File Certain Employee Plan Returns

File
With IRS
Only

File in DUPLICATE on or before the due date for filing the return. (See general instructions 2 and 3.)

Name of taxpayer or plan sponsor (see instructions): **Board of Trustees of Southern Nevada Culinary and Bartenders Pension Trust**
Address (Number and street): **1850 East Sahara, Suite 220**
City or town, State, and ZIP code: **Las Vegas, Nevada 89104**

Check applicable box and enter number (see specific instructions)

☒ Employee identification number **88-6016617** OR
☐ Social security number

- 1 I request an extension of time until (see specific instruction 1) **Oct. 15, 1981** (check appropriate block(s)):
- (a) ☒ To file Form 5500, Annual Return/Report of Employee Benefit Plan (with related schedules).
 - (b) ☐ To file Form 5500-C, Return/Report of Employee Benefit Plan (with related schedules).
 - (c) ☐ To file Form 5500-K, Return/Report of Employee Pension Benefit Plan (with related schedules).
 - (d) ☐ To file Form 5500-Q, Annual Return/Report of Employee Benefit Plan.
 - (e) ☐ To file Form 5500-R, Registration Statement of Employee Benefit Plan.
 - (f) ☐ To file Form 5330, Return of Initial Excess Taxes Related to Pension and Profit-Sharing Plans for tax year beginning

and ending **Oct. 15, 1981**
(g) If you checked (f) above, are you electing to be taxed under section 2003(c)(1)(B) of ERISA? ☐ Yes ☒ No

- (h) If you checked (f) above, enter the employer identification number of the plan sponsor: **N/A**
2 Complete the following for the plan covered by this application (see general instructions 2):

Southern Nevada Culinary and Bartenders Pension Trust

Plan number	Plan year ending		
	Month	Day	Year
001	12	31	80

- 3 (a) Has an extension of time to file the designated return(s) been previously granted for this tax year? ☐ Yes ☒ No
(b) If "Yes," show the date(s) to which the extension was granted (attach list if needed): **N/A**
(c) If you checked 1(a) through (f), have you been granted an extension of time to file your Federal income tax return? ☐ Yes ☒ No
(d) If 3(c) is "Yes," enter the date to which the extension was granted: **N/A**
(e) If you have not received an answer to your application for extension of time to file your Federal income tax return, insert "applied for" and enter your social security number, if applicable: **N/A**

- 4 Attach a detailed statement as to why you need the extension (see specific instruction 4).
5 If the extension is for Form 5330, enter the amount of tax estimated to be due on Form 5330. Pay this amount with this application: **N/A**

Caution: Interest on late payment of tax accrues at the rate established pursuant to Section 6621 of the Internal Revenue Code from the regular due date of the return until paid. (For the amount of penalty due to late payment of tax see specific instruction 5.)

Under penalties of perjury, I declare that to the best of my knowledge and belief the statements made on this form are true, correct, and complete, that I am authorized to prepare this application, and that I am:

- ☐ An employer filing Forms 5500, 5500-C, 5500-K, 5500-Q, 5500-R or 5330.
- ☐ A plan administrator filing Forms 5500, 5500-C, 5500-K, 5500-Q, 5500-R or 5330.
- ☐ A disqualified person, other than an employer, filing Form 5330.
- ☐ An individual filing Form 5330 to pay tax on excess contributions to a section 403(b)(7)(G) custodial account or a Keogh (H.R. 10) plan.
- ☐ A member in good standing of the bar of the highest court of (specify jurisdiction): **Nevada #451**
- ☒ A certified public accountant duly qualified to practice in (specify jurisdiction): **Nevada #451**
- ☐ A person enrolled to practice before the Internal Revenue Service.
- ☐ A duly authorized agent holding a power of attorney. The power of attorney need not be submitted unless requested.

Signature: **R. Craig Bird** R. Craig Bird Date: **July 14, 1981**
Notice to applicant—THE INTERNAL REVENUE SERVICE WILL INDICATE BELOW WHETHER THE EXTENSION IS GRANTED OR DENIED AND WILL RETURN THE ORIGINAL OF THE APPLICATION

- ☒ The application is approved to **10/15/81** (You MUST attach a copy of this form to each return you file for which an extension is granted.)
☐ The application is NOT approved. (You MUST attach a copy of this form to each return you file for which a grace period is granted.) However, in view of your reasons stated in the application, a 10-day grace period is granted from the date shown below or due date of the return, whichever is later. This 10-day grace period constitutes a valid extension of time for purposes of elections otherwise required to be made on timely filed returns.
☐ The application is NOT approved. EXTENSION APPROVED TO

After consideration of the reasons stated in your application, we have determined the extension is not warranted. (The 10-day grace period is not granted.)

- ☐ The application cannot be considered, since you filed it after the due date of the return.
☐ Other

DOMINIC E. PECORELLA, Director
OGDEN SERVICE CENTER

(U.S.G.)

(Director)

By:

Form 5500 (1980)

Page 2

6 (c) Other plan features:

(i) ☐ Thrift-savings(iii) ☐ Pension plan maintained outside the United States(ii) ☐ Keogh (H.R. 10) plan(iv) ☐ Participant-directed account plan

(d) Single employer plans enter the taxable year end of the employer in which this plan year ends . . . ▶ Month 12 Day 31 Year 80

7 Number of participants as of the end of the plan year (welfare plans complete only (a)(iv), (b), (c) and (d)):

(a) Active participants (employed or carried as active)	(i) Number fully vested . . .	8,547	
	(ii) Number partially vested . . .	-	
	(iii) Number nonvested . . .	30,805	
	(iv) Total . . .	39,352	
(b) Retired or separated participants receiving benefits . . .		1,796	
(c) Retired or separated participants entitled to future benefits . . .		914	
(d) Subtotal, sum of (a), (b) and (c) . . .		40,062	
(e) Deceased participants whose beneficiaries are receiving or are entitled to receive benefits . . .		4	
(f) Total, (d) plus (e) . . .		40,066	

(g) During this plan year or prior plan year was any participant(s) separated from service with a deferred vested benefit for which a Schedule 3SA (Form 5500) is required to be attached to this form?

(ii) If "Yes," enter the number of separated participants required to be reported . . . ▶ 319

8 Plan amendment information (welfare plans do not complete (b)(ii)):

(a) Was any amendment to this plan adopted in this plan year? . . .

(b) If "Yes," (i) And if any amendments have resulted in a change in the information contained in a summary plan description or previously furnished summary description of modifications—

(A) Have summary descriptions of change(s) been sent to participants? 7/81 . . .

(B) Have summary descriptions of the change(s) been filed with DOL . . .

(ii) Does any such amendment result in the reduction of the accrued benefit of any participant under the plan? . . .

(c) Enter the date the most recent amendment was adopted . . . ▶ Month 4 Day 29 Year 80

(d) If (i) Has a summary plan description been filed with DOL for this plan? . . .

(ii) If (i) is "Yes," what was the employer identification number and the plan number used to identify it? Employer identification number ▶ 88-6016617 Plan number ▶ 001

9 Plan termination information (welfare plans complete only (a), (b), (c) and (f)):

(a) Was this plan terminated during ☐ this plan year or ☐ any prior plan year? . . .

(b) If "Yes," were all trust assets distributed to participants or beneficiaries or transferred to another plan? . . .

(c) Was a resolution to terminate this plan adopted during this plan year or any prior plan year? . . .

(d) If (a) or (c) is "Yes," have you received a favorable determination letter from IRS with respect to such termination? . . .

(e) If (d) is "No," has a determination letter been requested from IRS? . . .

(f) If (a) or (c) is "Yes," have participants and beneficiaries been notified of the termination or the proposed termination? . . .

(g) If either item 9(a) or (c) is "Yes," and this plan is covered under PBGC termination insurance program has a notice of intent to terminate been filed? . . .

10 (a) In this 1-year, was this plan merged or consolidated into another plan or were assets or liabilities transferred to another plan?

If "Yes," identify other plan(s):

(b) Name of plan(s) ▶ N/A

(c) Employer identification number(s)

(d) Plan number(s)

(e) Has Form 5310 been filed? N/A . . . ☐ Yes ☐ No

11 Indicate funding arrangement:

(a) ☒ Trust (benefits provided in whole from trust funds)(b) ☐ Trust or arrangement providing benefits partially through insurance and/or annuity contracts(c) ☐ Trust or arrangement providing benefits exclusively through insurance and/or annuity contracts(d) ☐ Custodial account described in section 401(f) of the Code and not included in (c) above(e) ☐ Other (specify) ▶

(f) If (b) or (c) is checked, enter the number of Schedules A (Form 5500) which are attached . . . ▶

12 Did any person who rendered services to the plan receive, directly or indirectly, compensation from the plan in the plan year? . . . ☒ Yes ☐ No

If "Yes," furnish the following information:

a. Name	b. Employer identification number (see instructions)	c. Official plan position	d. Relationship to employer, employee organization or person known to be a party-in-interest	e. Gross salary or allowances paid by plan	f. Fees and commissions paid by plan	g. Nature of service code (see instructions)
See attached schedules						

Form 9500 (1980)

Page 3

- 13 Plan assets and liabilities at the beginning and the end of the plan year (list all assets and liabilities at current value). A fully insured welfare plan or a pension plan with no trust and which is funded entirely by allocated insurance contracts which fully guarantee the amount of benefit payments should check box and not complete this item. ☐

Note: Include all plan assets and liabilities of a trust or separately maintained fund. (If more than one trust/fund, report on a combined basis.) Include all insurance values except for the value of that portion of an allocated insurance contract which fully guarantees the amount of benefit payments. Round off amounts to nearest dollar. Trusts with no assets at the beginning and the end of the plan year enter zero on line 13(h).

Assets		a. Beginning of year	b. End of year
(a) Cash: (i) On hand			
(ii) In bank: (A) Certificates of deposit			
(B) Other interest bearing	1,992,098	1,718,949	
(C) Noninterest bearing	404,139	180,602	
(iii) Total cash, sum of (i) and (ii)	2,396,237	1,909,551	
(b) Receivables: (i) Employer contributions	2,714,177	2,685,003	
(ii) Employee contributions			
(iii) Other	537,352	955,413	
(iv) Reserve for doubtful accounts	(783,000)	(384,000)	
(v) Net receivables, sum of (i), (ii) and (iii) minus (iv)	2,468,529	3,256,416	
(c) General investments other than party-in-interest investments:			
(i) U.S. Government securities: (A) Long term	8,442,000	12,720,348	
(B) Short term	1,868,000	2,873,023	
(ii) State and municipal securities			
(iii) Corporate debt instruments: (A) Long term	10,518,000	16,737,125	
(B) Short term	10,876,000	11,051,241	
(iv) Corporate stocks: (A) Preferred			
(B) Common	20,284,000	34,179,956	
(v) Shares of a registered investment company			
(vi) Real estate			
(vii) Mortgages	12,160,341	13,713,415 *	
(viii) Loans other than mortgages			
(ix) Value of interest in pooled fund(s)			
(x) Other investments			
(xi) Total general investments, sum of (i) through (x)	64,428,341	91,275,108	
(d) Party-in-interest investments:			
(i) Corporate debt instruments			
(ii) Corporate stocks: (A) Preferred			
(B) Common			
(iii) Real estate			
(iv) Mortgages			
(v) Loans other than mortgages			
(vi) Other investments			
(vii) Total party-in-interest investments, sum of (i) through (vi)			
(e) Buildings and other depreciable property			
(f) Value of unallocated insurance contracts (other than pooled separate accounts):			
(i) Separate accounts			
(ii) Other			
(iii) Total, (i) plus (ii)			
(g) Other assets	154,598	105,540	
(h) Total assets, sum of (a)(iii), (b)(v), (c)(xi), (d)(vii), (e), (f)(iii) and (g)	69,447,705	96,546,615	
Liabilities			
(i) Payables: (i) Plan claims			
(ii) Other payables	324,738	280,127	
(iii) Total payables, (i) plus (ii)	324,738	280,127	
(ii) Acquisition indebtedness			
(k) Other liabilities			
(l) Total liabilities, sum of (i)(iii), (j) and (k)	324,738	280,127	
(m) Net assets, (h) less (l)	69,122,967	96,266,488	
(n) During the plan year what were the:			
(i) Total cost of acquisitions for common stock?		19,838,296	
(ii) Total proceeds from dispositions of common stock?		13,359,838	

* See Notes 5, 7, 8 and 9 in the attached financial statements.

Form 5500 (1989)

Page 4

14 Plan income, expenses and changes in net assets for the plan year:
 Note: Include all income and expenses of a trust(s) or separately maintained fund(s) including any payments made for allocated insurance contracts. Round off amounts to nearest dollar.

Income		a. Amount	b. Total
(a) Contributions received or receivable in cash from—			
(i) Employer(s) (including contributions on behalf of self-employed individuals)		22,195,329	
(ii) Employees			
(iii) Others			22,195,329
(b) Noncash contributions (specify nature and by whom made) ▶			
(c) Total contributions, sum of (a) and (b)			
(d) Earnings from investments—			
(i) Interest		4,585,442	
(ii) Dividends		861,467	
(iii) Rents			
(iv) Royalties			5,456,909
(e) Net realized gain (loss) on sale or exchange of assets—			
(i) Aggregate proceeds		245,590,271	
(ii) Aggregate costs		243,861,137	1,729,134
(f) Other income (specify) ▶ <u>Recovery of employer contributions written-off</u>			399,000
(g) Total income, sum of (c) through (f)			28,780,372
Expenses		a. Amount	b. Total
(h) Distribution of benefits and payments to provide benefits—			
(i) Directly to participants or their beneficiaries		3,700,140	
(ii) To insurance carrier or similar organization for provision of benefits			
(iii) To other organizations or individuals providing welfare benefits			3,700,140
(i) Interest expense			
(j) Administrative expenses—			
(i) Salaries and allowances			
(ii) Fees and commissions		686,691	
(iii) Insurance premiums for Pension Benefit Guaranty Corporation		25,879	
(iv) Insurance premiums for fiduciary insurance other than bonding		57,960	
(v) Other administrative expenses		1,618,076	2,388,606
(k) Other expenses (specify) ▶			
(l) Total expenses, sum of (h) through (k)			6,088,746
(m) Net income (expense), (g) minus (l)			23,691,626
Change in net assets—		a. Amount	b. Total
(i) Unrealized appreciation (depreciation) of assets		3,451,895	
(ii) Other changes (specify) ▶			3,451,895
(c) Net increase (decrease) in net assets for the year, (m) plus (n)			27,143,521
(d) Net assets at beginning of year, line 13(m), column a			69,122,967
(e) Net assets at end of year, (c) plus (d) (equals line 13(m), column b)			96,266,488
15 All plans complete (a). Plans funded with insurance policies or annuity contracts also complete (b) and (c):			
(a) Since the end of the plan year covered by the last return/report has there been a termination in the appointment of any trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager or custodian?		Yes	No
If "Yes," explain and include the name, position, address and telephone number of the person whose appointment has been terminated ▶ <u>See attached schedule</u>		X	
(b) Have any insurance policies or annuities been replaced during this plan year?			X
If "Yes," explain the reason for the replacement ▶			
(c) At any time during the plan year was the plan funded with: NO			
(i) ☐ Individual policies or annuities, (ii) ☐ Group policies or annuities, or (iii) ☐ Both.			

* See notes 5, 7, 8 and 9 in the attached Financial Statements.

Form 950 (12-82)

Page 6

22 (Continued)

(a) The accountant's opinion is ☐ not required or ☒ required, attached to this form, and is—(i) ☐ Unqualified(ii) ☐ Qualified(iii) ☐ Adverse(iv) ☒ Other (explain) ▶ Disclaimer23 (a) (i) Is the plan covered under the Pension Benefit Guaranty Corporation termination insurance program? ☒ Yes ☐ No ☐ Not determined(ii) If "Yes," list employer identification number(s) and/or plan number(s) used in any filing with PBGC if the number was different from the numbers listed in item 1(b) or 5(c) ▶ N/A

(b) If (a)(i) is "Yes," Or "Not determined," did any events requiring notice to PBGC occur during this plan year? . . .

(c) If (b) is "Yes," indicate which events occurred that required notice to PBGC (see instructions) N/A

Yes	No
	X

If additional space is required for any item, attach additional sheets the same size as this form.

☆ U.S. GOVERNMENT PRINTING OFFICE : 1982-O-813-180

S.I. 922-1074487

SOUTHERN NEVADA CULINARY AND BARTENDERS PENSION TRUST

Form 5500

88-6016617

12/31/80

Page 2, Item 12 - The following were employed by Thomas L. Karsten Associates in its position as Investment Manager and were paid out of the Trust's assets:

<u>Name</u>	<u>Official plan position</u>	<u>Relationship to employer</u>	<u>Gross salaries and allowances</u>	<u>Fees and commissions</u>	<u>Nature of service code</u>
Title Insurance and Trust Company	Title Company	-	-	\$ 14,214	99
Ginther Engineering, Inc.	Engineers	-	-	22,375	99
Robinson, Stevens & Wainwright	Attorneys	-	-	21,009	22
Tonken, Torp & Galen	Attorneys	-	-	19,693	22
Mitchell, Silberberg & Knupp	Attorney	-	-	198,075	22
John J. McCune	Attorney	-	-	9,346	22
Highsaw, Mahoney & Friedman, P.C.	Attorneys	-	-	1,260	22
Levy and Erens	Attorneys	-	-	106,335	22
Coldwell Banker Management Corp.	Appraiser	-	-	20,563	28
Boyle Engineering Corp.	Engineers	-	-	605	99
Resource Concepts, Inc.	Engineers	-	-	28,587	99
Lundy Engineering	Engineer	-	-	27,564	99
J. H. Kleinfelder & Associates	Consultant	-	-	1,726	17
Hoge, Fenton, Jones & Appel, Inc.	Attorneys	-	-	17,408	22
Main Hurdman & Cranstoun	Accountants	-	-	6,907	10
Eleanor Volkmar	Court Reporter	-	-	3,460	99
Marvin F. Poerand Company	Ad Valorem Tax Service	-	-	1,882	99
Rutan & Tucker	Attorneys	-	-	5,846	22
McDonald, Carano, Wilson, Bergin & Bible	Attorneys	-	-	4,995	22
Pulakos & Alongi, Ltd.	Accountants	-	-	2,309	10
Michael Smith	Consultant	-	-	5,235	17
T. D. Service Company	Foreclosure Service	-	-	31,106	99

SOUTHERN NEVADA CULINARY AND BARTENDERS PENSION TRUST

Form 5500

88-6016617

12/31/80

Page 2, Item 12 - (Continued):

<u>Name</u>	<u>Official plan position</u>	<u>Relationship to employer</u>	<u>Gross salaries and allowances</u>	<u>Fees and commissions</u>	<u>Nature of service code</u>
George Rudiak, Chartered Chicago Title Insurance Co.	Attorney Title Company	- - -	- - -	\$ 1,607 24,126	22 99
Thomas L. Karsten Associates	Investment Manager	- -	- -	82,821	21

SOUTHERN NEVADA CULINARY AND BARTENDERS PENSION TRUST

Form 5500

88-8016617

12/31/80

Page 2, Item 12 - The following were paid while American Benefit Plan Administrators was administrator of the Trust:

<u>Name</u>	<u>Official plan position</u>	<u>Relationship to employer</u>	<u>Gross salaries and allowances</u>	<u>Fees and commissions</u>	<u>Nature of service code</u>
West Coast Employee Benefits Services	Service Provider	-	-	\$ 64,446	13
American Benefit Plan Administrators	Service Provider	-	-	230,200	13
Main Hurdman & Cranstoun	Accountants	-	-	5,612	10
Forster, Gemmill & Farmer	Attorneys	-	-	48,659	22
Rock, Fusco, Reynolds & Heneghan	Attorneys	-	-	33,303	22
Thomas L. Pursel	Attorney	-	-	22,626	22
Dan McGinn & Associates	Consultants	-	-	6,015	27
Thomas L. Karsten Associates	Real Estate Investment Advisor	-	-	187,500	21
Martin E. Segal & Company	Actuary	-	-	11,391	11
Scudder Stevens & Clark	Investment Manager	-	-	61,277	21
Trainer Wortham & Company	Investment Manager	-	-	10,068	21
Nevada State Bank	Custodian	-	-	28,044	18

SOUTHERN NEVADA CULINARY AND BARTENDERS PENSION TRUST

Form 5500

88-6016617

12/31/80

Page 2, Item 12 - The following were paid while West Coast Employee Benefits Services was administrator of the Trust:

Name	Official plan position	Relationship to employer	Gross salaries and allowances	Fees and commissions	Nature of service code
West Coast Employee Benefits Services *	Service Provider	-	-	\$ 392,045	13
Main Hurdman & Cranstoun	Accountants	-	-	55,752	10
Davis, Cowell & Bowe	Attorneys	-	-	2,741	22
Forster, Gemmill & Farmer	Attorneys	-	-	49,173	22
Rock, Fusco, Reynolds & Heneghan	Attorneys	-	-	19,219	22
Thomas L. Pursel	Attorney	-	-	17,998	22
Dan McGinn & Associates	Consultants	-	-	4,099	27
Thomas L. Karlsen Associates	Real Estate Investment Advisor	-	-	264,385	21
Martin E. Segal & Company	Actuary	-	-	6,834	11
Trainer Wortham & Company	Investment Manager	-	-	25,941	21
Nevada State Bank	Custodian	-	-	25,880	18

* The possible status of Earl Liever, dba West Coast Employee Benefits Services as a fiduciary of the Plan was unresolved as of July 31, 1980.

Page 5, Item 19 - The Trust has received a determination letter from the Internal Revenue Service. However, the Trust was amended on January 1, 1976 and has been subsequently further amended and has requested an updated determination letter. As of this date, the updated determination letter has not been received.

SOUTHERN NEVADA CULINARY AND BARTENDERS PENSION TRUST

Form 5500

88-6016617

12/31/80

Page 4, Item 14 J(v) - Other Administrative ExpensesReal Estate Consulting Fees:

Legal	\$ 380,503
Engineering consultants	103,641
Accounting	9,216
Appraisals	19,705
Real Estate consultant	1,086
Travel	32,048
Title fees	13,572
Investment manager	451,885
Rent	5,921
Insurance	2,998
Office expense	54,159
Operating cost to maintain golf course	85,779
Taxes	1,192
Other	11,385
	<u>\$1,173,090</u>

Non-Real Estate Administrative Fees:

Accounting	61,364
Legal	193,719
Pension consultant	10,114
Insurance and bonds	1,231
Investment fees	97,286
Custodial fees	53,924
Actuary service fees	18,225
Other	9,123
	<u>444,986</u>
	<u>\$1,618,076</u>

SOUTHERN NEVADA CULINARY AND BARTENDERS PENSION TRUST

Form 5500

88-6016617

12/31/80

Page 4, Item 15 - Changes in Trustees, Accountants, Insurance Carriers, Enrolled Actuaries, Administrator, Investment Manager or Custodian

			<u>Date Terminated</u>	<u>Date Appointed</u>
T	Jeff D. McColl, Jr.	Trustee	1/15/80	
A	Mike Pisanello	Trustee		3/10/80
T	West Coast Employee Benefits Services	Administrator	7/31/80	
A	American Benefits Plan Administrators	Administrator		8/1/80

MARTIN E. SEGAL COMPANY

820 SOUTH VIRGIL AVENUE • LOS ANGELES, CALIFORNIA 90020 • (313) 382-1347

July 10, 1980 .

**SOUTHERN NEVADA CULINARY AND BARTENDERS
PENSION TRUST**ATLANTA
BOSTON
CHICAGO
CLEVELAND
DENVER
DETROIT
HOUSTON
NEW ORLEANS
NEW YORK
PHOENIX
SAN FRANCISCO
WASHINGTON, D.C.
TORONTOActuarial Valuation Certificate

This is to certify that we have prepared an actuarial valuation of the Fund as of January 1, 1980.

The certificate contains the following attached exhibits:

- EXHIBIT I. Actuarial Cost Factors for Year Beginning January 1, 1980
- EXHIBIT II. Actuarial Assumptions and Funding Method
- EXHIBIT III. Summary of Plan Provisions
- EXHIBIT IV. Minimum Funding Standard Account Amortization Charges and Credits

The valuation was based on the assumption that the plan was qualified for the year, on financial information received from Main Hurdman & Cranstoun, Certified Public Accountants, and on participant census data provided by West Coast Employee Benefits Services of Nevada.

To the best of my knowledge, the information supplied in this actuarial valuation is complete and accurate and, in my opinion, the assumptions used in the aggregate (a) are related to reasonable expectations and (b) represent my best estimate of anticipated experience under the plan.

James Laws
 Certified by: James Laws, F.S.A.
 Director of Actuarial Services
 Enrolled Actuary No. 2726

Nancy Braun
 Reviewed by: Nancy Braun, M.A.A.A.
 Associate Actuary

1980

(Form 5500)
Department of the Treasury
Internal Revenue Service
Department of Labor
Pension and Welfare Benefit Programs
Pension Benefit Guaranty Corporation

This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974, referred to as ERISA, and section 6059(a) of the Internal Revenue Code, referred to as the Code.

▶ Attach to Forms 5500, 5300-C, 5500-K or 5300-R if applicable.

**This Form is
Open to Public
Inspection**

For fiscal plan year beginning January 1, 1980 and ending December 31, 1980

▶ Please complete every item on this form. If an item does not apply, enter "N/A."
▶ Round off amounts to nearest dollar.

Name of plan sponsor as shown on line 1(s) of Form 5500, 5500-C, 5500-K or 5500-R
Board of Trustees, Southern Nevada Culinary & Bartenders

Employer identification number
88 : 6016617

Name of plan

Southern Nevada Culinary & Bartenders Pension Trust

Enter three digit plan number	0	0	1	Yes	No
-------------------------------	---	---	---	-----	----

- | | | number | 0 | 1 | 2 |
|---------|---|--------|---|---|---|
| 1 | Has a waiver of a funding deficiency for the current plan year been approved by the IRS? | | | | X |
| | If "Yes," attach a copy of the IRS approval letter. | | | | |
| 2 | Is a waived funding deficiency of a prior plan year being amortized in the current year? | | | | X |
| 3 | Have any of the periods of amortization for charges described in section 412(b)(2)(B) of the Code been extended by IRS? | | | | X |
| | If "Yes," attach a copy of the IRS approval letter. | | | | |
| 4(a) | Has the shortfall funding method been used? | | | | X |
| (b) (i) | If (a) is "Yes," has the deferral of the amortization of the shortfall gain (loss), beyond the plan year following the year in which the shortfall gain (loss) arose, been elected? | | | | |
| (ii) | If (a) is "Yes," has the deferral of the amortization of the actuarial gain (loss), beyond the first plan year after valuation, been elected? | | | | |
| 5 | Has a change in funding method for the current plan year been made? | | | | X |
| | If "Yes," attach a copy of the IRS approval letter. | | | | |

6 Operational Information:

(a) Enter most recent actuarial valuation date **▶ January 1, 1980**

(b) Enter date(s) and amount of contributions received this plan year for prior plan years and not previously reported:

Date(s) Amount \$ -0-

	Amount
(c) Current value of the assets accumulated in the plan as of the beginning of the plan year	69,123,000

(d) Present value of vested benefits as of the beginning of plan year:

(7) For retired participants and beneficiaries receiving payments	12,074,100
---	------------

(ii) For other participants	57,840,400
---------------------------------------	------------

(iii) Total	69,914.500
-----------------------	------------

(e) Present value of nonvested accrued benefits as of the beginning of the plan year.	31,809,400
---	------------

(f) Number of persons covered (included in the most recent actuarial valuation):

(I) Active participants	29,380
(II) Terminated participants	

(IV) Terminated participants with vested benefits	953
(VII) Retired participants and beneficiaries	953

(iii) Retired participants and beneficiaries of deceased participants	1,605
---	-------

7 Contributions made to the plan for the plan year by employer(s) and employees:

(a) Month	(b) Year	(c) Amount paid by employer
- -	1980	\$ 22,196.000
		\$ 0
Total . . .		\$ 22,196.000 \$ 0

Statement by Enrolled Actuary (see instructions before signing):

To the best of my knowledge, the information supplied in this schedule and on the accompanying statement, if any, is complete and accurate, and to my opinion the assumed cost in the aggregate (a) are reasonably related to the experience of the plan and to reasonable expectations, and (b) represent my best estimate of anticipated costs for the plan.

James Law

Print or type name of actuary

Martin E. Segal Company, 520 S. Vine St. New York 1, N.Y.

Address

90020

2726

Enrollment number

(213) 382-1347

Telephone number (including area code)

B Funding standard account and other information:

(a) Accrued liabilities as determined for funding standard account as of (enter date) ▶ Jan 1, 1980	\$ 142,155,600
(b) Value of assets as determined for funding standard account as of (enter date) ▶ Jan 1, 1980	69,123,000
(c) (i) Actuarial gains or (losses) for period ending ▶ December 31, 1979	2,039,900
(ii) Shortfall gains or (losses) for period ending ▶	N/A
(d) Accumulated funding deficiency at end of plan year (amount of contribution certified by the actuary as necessary to reduce the funding deficiency to zero), from 9(m) or 10(g)	
9 Funding standard account statement for plan year ending ▶ December 31, 1980	
Charges to funding standard account:	
(a) Prior year funding deficiency, if any	\$ -0-
(b) Employer's normal cost for plan year	12,796,300
(c) Amortization charges (outstanding balance at the beginning of the plan year ▶ \$80,578,600)	5,537,900
(d) Interest on (a), (b) and (c)	498,900
(e) Total charge, sum of (a) through (d)	18,833,100
Credits to funding standard account:	
(f) Prior year credit balance, if any	\$ 5,035,600
(g) (i) Employer contributions (total from column (b) of item 7)	22,196,000
(ii) Employer contributions received this plan year for prior plan years and not previously reported	-0-
(h) Amortization credits (outstanding balance at beginning of plan year ▶ \$ 2,510,400)	207,300
(i) Interest on (f), (g) and (h)	862,700
(j) Other (specify) ▶	-0-
(k) Total credits, sum of (f) through (j)	28,301,600
Balance:	
(l) Credit balance, excess, if any, of (k) over (e)	\$ 2,468,500
(m) Funding deficiency, excess, if any, of (e) over (k)	

10 Alternative minimum funding standard account (omit if not used):

(a) Was the entry age normal cost method used to determine entries in item 9 above? ☐ Yes ☐ No

If "No," omit (b) through (g) below.

(b) Normal cost

(c) Excess, if any, of value of accrued benefits over market value of assets

(d) Interest on (b) and (c)

(e) Employer contributions (total from column (b) of item 7)

(f) Interest on (a)

(g) Funding deficiency, excess, if any, of the sum of (b) through (d) over the sum of (e) and (f)

11 Checklist of actuarial cost methods:

(a) ☐ Attained age normal (b) ☒ Entry age normal (c) ☐ Accrued benefit (unit credit)

(d) ☐ Aggregate (e) ☐ Frozen initial liability (f) ☐ Individual level premium

(g) ☐ Other (specify) ▶

12 Checklist of certain actuarial assumptions:

	A Used for item 6(d) and (e)— value of accrued benefits		B Used for item 8, 9 or 10— funding standard account	
	Pre-retirement	Post-retirement	Pre-retirement	Post-retirement
(a) Rates specified in insurance or annuity contracts	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No
(b) Mortality table code:				
(i) Males	5 + 1	5 + 1	5 + 1	5 + 1
(ii) Females	5F + 1	5F + 1	5F + 1	5F + 1
(c) Interest rate	6.00 %	6.00 %	6.00 %	6.00 %
(d) Retirement age	NRA	NRA	NRA	NRA
(e) Expense loading	N/A %	N/A %	9.9 %	N/A %
(f) Annual withdrawal rate:	Male Female	Male Female	Male Female	Male Female
(i) Age 25	7.6 % 11.6 %	7.6 % 11.6 %	7.6 % 11.6 %	7.6 % 11.6 %
(ii) Age 40	5.9 % 9.3 %	5.9 % 9.3 %	5.9 % 9.3 %	5.9 % 9.3 %
(iii) Age 55	0.5 % 1.4 %	0.5 % 1.4 %	0.5 % 1.4 %	0.5 % 1.4 %
(g) Ratio of salary at normal retirement to salary at:				
(i) Age 25	N/A %	N/A %	N/A %	N/A %
(ii) Age 40	N/A %	N/A %	N/A %	N/A %
(iii) Age 55	N/A %	N/A %	N/A %	N/A %
(h) Is a statement of actuarial assumptions, actuarial funding method, etc., attached? ☒ Yes ☐ No				

EXHIBIT I

ACTUARIAL COST FACTORS FOR YEAR BEGINNING JANUARY 1, 1980

The valuation was made with respect to the following data supplied to us by the administrator:

- a. 29,380 employees active during year ended December 31, 1979 (including 4,931 employees whose sex and/or birthdate was not reported).
 - b. 953 employees inactive during year ended December 31, 1979, with vested rights to immediate or deferred pensions.
 - c. 1,605 pensioners as of valuation date (including four beneficiaries).
- 6,562 employees with less than one year of Pension Credit are excluded from the valuation.

The cost factors as of the valuation date are as follows:

1. Normal cost, including administrative expenses.	\$ 12,796,300
2. Accrued liability - total	142,155,600
Active employees.	\$122,226,400
Inactive employees with vested rights to immediate or deferred pensions.	7,855,000
Pensioners and beneficiaries.	12,074,200
3. Net assets at market value.	69,123,000
4. Unfunded accrued liability.	73,032,600

Note: Normal cost is adjusted for monthly payments.

EXHIBIT II

ACTUARIAL ASSUMPTIONS AND FUNDING METHOD

Mortality rates:

1971 Group Annuity Mortality Table
(separate male and female tables) with
ages set forward one year.

Termination rates before
retirement:

Age	Men - Rate(%)			Total
	Death	Disability	Withdrawal	
20	0.05	.06	7.89	8.00
25	0.07	.09	7.64	7.80
30	0.09	.11	7.30	7.50
35	0.12	.15	6.73	7.00
40	0.18	.22	5.91	6.31
45	0.32	.36	4.83	5.52
50	0.59	.61	3.06	4.26
55	0.93	1.01	0.47	2.41
60	1.44	1.63	0.00	3.07

Age	Women - Rate(%)			Total
	Death	Disability	Withdrawal	
20	0.03	.06	11.91	12.00
25	0.04	.09	11.57	11.70
30	0.05	.11	11.15	11.31
35	0.07	.15	10.47	10.69
40	0.10	.22	9.28	9.60
45	0.15	.36	7.39	7.90
50	0.23	.61	4.64	5.48
55	0.36	1.01	1.40	2.77
60	0.61	1.63	0.00	2.24

Retirement age:

62, or completion of service requirement if
later.

Unknown characteristics
of employees:

Same as those exhibited by employees with
known characteristics.

Net investment return:

6.00% per annum.

Future benefit accrual
rate:

Same as that experienced during the one-
year period preceding the valuation date.

Contribution income:

Annual average of 1,800 hours of income per active employee included in valuation, and an hourly contribution rate of 40¢ in 1980.

Administrative expenses:

\$1,150,000 for 1980.

Funding method:

Entry Age Normal Cost.

EXHIBIT III
SUMMARY OF PLAN PROVISIONS

The following is a brief summary of the principal benefit provisions of the restated plan effective January 1, 1976.

1. A Regular Pension for employees who retire at age 62 or over with at least 10 years of Pension Credit. The monthly amount of the Regular Pension is equal to \$11.00 for each year of Pension Credit accumulated prior to January 1, 1976, plus a benefit for service after January 1, 1976, determined in accordance with the following schedule:

<u>Hours Worked in Plan Year</u>	<u>Earned Benefit</u>	<u>Hours Worked in Plan Year</u>	<u>Earned Benefit</u>
2,000 & Over	\$15.72	1,000 - 1,099	\$7.86
1,900 - 1,999	14.93	900 - 999	7.07
1,800 - 1,899	14.14	800 - 899	6.28
1,700 - 1,799	13.36	700 - 799	5.50
1,600 - 1,699	12.57	600 - 699	4.71
1,500 - 1,599	11.79	500 - 599	3.93
1,400 - 1,499	11.00	400 - 499	3.14
1,300 - 1,399	10.21	300 - 399	2.35
1,200 - 1,299	9.43	Less than 300	None
1,100 - 1,199	8.64		

Pensioners who have received credit for at least 14,000 hours of employment are entitled to a pension of not less than \$125.00 per month.

2. Vesting is provided for employees who have accumulated at least ten years of pension credit.
3. Joint and Survivor Benefit. For married participants, retirement benefits are paid in the form of a 50% joint and survivor annuity unless this form is rejected by the employee. If not rejected, the benefit amount otherwise payable is reduced to reflect the joint and survivor form. If rejected, or if not married, benefits are payable for the life of the employee without reduction.
4. Lump Sum Option. A retiring employee who rejects the Joint and Survivor Benefit or is not married may elect to receive up to 50% of the actuarial equivalent of his pension as a lump sum payment and the remaining portion of his benefit in monthly payments.

EXHIBIT IV

MINIMUM FUNDING STANDARD ACCOUNT
AMORTIZATION CHARGES AND CREDITS

	Established		Type of Liability	Annual Payment		As of January 1, 1980	
	Date	Period Years		Interest Assumption	Amount	Years Remaining	Present Value at 6%
Charges:	1/1/77	40	Initial	6.00%	\$4,704,500	37	\$71,216,100
	1/1/78	20	Experience Loss	6.00	559,200	18	6,219,400
	1/1/79	20	Experience Loss	6.00	274,200	19	3,143,100
			Total Amortization Charges		\$5,537,900		\$80,578,600
Credits:	1/1/78	30	Change in Actuarial Assumptions	6.00%	\$ 34,200	28	\$ 470,500
	1/1/80	20	Experience Gain	6.00	173,100	20	2,039,900
			Total Amortization Credits		\$ 207,300		\$ 2,510,400
			Net Amortization Charge		\$5,330,600		\$78,068,200

**SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST**

FINANCIAL STATEMENTS

YEARS ENDED DECEMBER 31, 1980 AND 1979

and

REPORT OF CERTIFIED PUBLIC ACCOUNTANTS

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

FINANCIAL STATEMENTS

Years Ended December 31, 1980 and 1979

TABLE OF CONTENTS

	<u>Page</u>
Accountant's Report on Financial Statements	1-2
Financial Statements:	
Statement of Net Assets Available for Benefits	3
Statement of Changes in Net Assets Available for Benefits	4
Notes to Financial Statements	5-22
Supplementary Information:	
Schedule of Marketable Securities:	
1980	23-29
1979	30-34
Schedule of Real Estate Loans:	
1980	35
1979	36
Schedule of Reportable Transactions:	
Purchases	37-38
Sales	39



319 South Third Street, P.O. Box 2070, Las Vegas, NV 89101, Telephone: 702/382-7020

**The Board of Trustees
Southern Nevada Culinary and
Bartenders Pension Trust**

We have examined the statement of net assets available for benefits of the Southern Nevada Culinary and Bartenders Pension Trust (Trust) as of December 31, 1980 and 1979, and the related statement of changes in net assets available for benefits for the years then ended. Except as set forth in the second paragraph, our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

We were unable to obtain written representation from the Trustees for the Trust for 1980 and 1979. Representation from counsel and co-counsel for the Trust for 1980 and 1979 was limited to non-real estate matters. Also, we were unable to obtain representation from the company who maintained the records of the Trust the first seven months of 1980. Therefore, we were unable to corroborate certain information obtained during the course of our examination.

As discussed in Notes 7 and 8 to the financial statements, the real estate loans totaling \$29,543,000 at December 31, 1980 and \$27,987,000 at December 31, 1979 due from Murrieta Hot Springs (Murrieta) and Sierra Charter Corporation of Nevada (Sierra) were collateralized either by deeds of trust on real estate owned by the Companies, substitute collateral in the form of third party mortgages or trust deeds which were collateralized by the underlying real estate or other collateral. The collectibility of the real estate loans due from Murrieta and Sierra is not determinable at this time. The value of certain collateral has been estimated to be \$13,583,000 and \$12,027,000 at December 31, 1980 and 1979, respectively, and does not include any value for the personal guarantees of Morris A. Shenker who owns or controls Murrieta, Sierra and other related companies, nor has there been any value assigned to the notes receivable from Mr. Shenker and I.J.K. Nevada, Inc. (Mr. Shenker is the major stockholder of I.J.K. Nevada, Inc.

and controls the Company) since the value of these items is not determinable at this time, as more fully described in Note 9. As a result, the Trustees have made a provision for possible losses on real estate loans of \$15,960,000.

As discussed in Note 5 to the financial statements, on March 30, 1977, the Secretary of Labor of the United States filed a civil action and motion for preliminary injunction in the United States District Court, District of Nevada, naming the Trust as an involuntary plaintiff and naming as defendants certain past and present trustees, Morris A. Shenker, Murrieta, Sierra and other corporations owned and/or controlled by Mr. Shenker. The complaint and motion for preliminary injunction asserts, among other things, that the defendant trustees have breached their fiduciary obligations in violation of the duties imposed upon them by the Employees Retirement Income Security Act of 1974 (ERISA) by failing to make the loans prudently, by failing to diversify the Trust's assets, and by entering into prohibited transactions during their respective periods of service as trustees.

As described in Note 11, the Internal Revenue Service is presently considering revocation of the tax exempt status of the Trust. Revocation would result in a material decrease in the Trust's assets.

Because of the limitations in the scope of our engagement referred to in the second paragraph and the material uncertainties referred to in subsequent paragraphs, we do not express an opinion on the financial statements referred to in the first paragraph.

Our examination of the 1980 financial statements referred to above also included the financial schedules listed in the accompanying index as required by Item 22(a) of Form 5500. Because of the limitations in the scope of our engagement referred to in the second paragraph and the material uncertainties referred to in subsequent paragraphs, we do not express an opinion on these schedules.

Maia Hurdman

Certified Public Accountants

Las Vegas, Nevada
May 28, 1981 (except as
to Note 11 which is as
of September 9, 1981)

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

STATEMENT OF NET ASSETS AVAILABLE FOR BENEFITS

December 31, 1980 and 1979

	<u>1980</u>	<u>1979</u>
<u>ASSETS</u>		
Investments at fair value:		
Marketable securities (Notes 2 and 4)	\$77,562,000	\$52,268,000
Real estate loans (Note 2):		
Earning (Note 6)	131,000	134,000
Non-earning (Note 7)	29,543,000	27,987,000
Less allowance for possible losses (Notes 5, 7, 8 and 9)	15,960,000	15,960,000
	<u>13,583,000</u>	<u>12,027,000</u>
Receivables:		
Contributions receivable less allowance for doubtful accounts of \$384,000 and \$783,000 (Note 2)	2,301,000	1,931,000
Dividends and interest receiv- able (Note 2)	955,000	537,000
	<u>3,256,000</u>	<u>2,468,000</u>
Cash	1,910,000	2,396,000
Other assets	105,000	155,000
	<u>\$96,547,000</u>	<u>\$69,448,000</u>
 <u>LIABILITIES AND NET ASSETS AVAILABLE FOR BENEFITS</u>		
Accounts payable	\$ 280,000	\$ 325,000
Net assets available for benefits (Note 3)	96,267,000	69,123,000
	<u>\$96,547,000</u>	<u>\$69,448,000</u>

The accompanying notes are an integral
part of these financial statements.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

STATEMENT OF CHANGES IN NET ASSETS AVAILABLE FOR BENEFITS

Years Ended December 31, 1980 and 1979

	<u>1980</u>	<u>1979</u>
Additions to net assets:		
Employer contributions	\$22,196,000	\$20,943,000
Interest income	4,595,000	2,714,000
Dividend income	861,000	690,000
Net appreciation in fair value of marketable securities	3,452,000	1,630,000
Gain on sale of securities	1,729,000	66,000
Other income	399,000	-
	<u>33,232,000</u>	<u>28,043,000</u>
Deductions from net assets:		
Benefits paid to members	3,700,000	3,568,000
Administrative and operating expenses:		
Administration fees (Note 10)	687,000	671,000
Marketable securities con- sulting and custodial fees	151,000	107,000
Real estate consulting fees (Notes 2, 5, 7, 8 and 9):		
Investment manager	452,000	452,000
Legal	380,000	795,000
Appraisal and accounting	29,000	27,000
Other expenses	312,000	269,000
Professional fees:		
Legal	194,000	207,000
Accounting	61,000	94,000
Other	28,000	10,000
Provision for uncollectible employer contributions	-	483,000
Miscellaneous expenses	94,000	18,000
	<u>6,088,000</u>	<u>6,701,000</u>
Net increase	27,144,000	19,342,000
Net assets available for benefits:		
Beginning of year	<u>69,123,000</u>	<u>49,781,000</u>
End of year	<u>\$96,267,000</u>	<u>\$69,123,000</u>

The accompanying notes are an integral
part of these financial statements.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

NOTES TO FINANCIAL STATEMENTS

1. Description of the Plan

The following is a brief description of the Southern Nevada Culinary and Bartenders Pension Plan (Plan), which is provided for general information purposes only. Participants should refer to the Plan and Trust Agreements for a more complete description.

A. General

The Southern Nevada Culinary and Bartenders Pension Trust (Trust) was established on December 21, 1971 for the purpose of implementing a program of providing pension benefits for employees performing "covered employment" as defined in the collective bargaining agreements negotiated with employers by the Culinary Workers Union Local No. 226 and/or the Bartenders Union Local No. 165 (The Unions). Under the terms of the Trust Agreement, the Trustees enacted a Pension Plan providing for payment of retirement benefits to eligible participants.

B. Pension Benefits

Under the Plan, employees with 10 or more years of pension credit are entitled upon retirement at age 62 or older to receive defined pension benefits. The benefit amount is based on the number of pension credit years, age at retirement, and the payment method. Under certain circumstances, accumulated pension credit years may be forfeited if an employee experiences a break in service for a number of years.

Employees may also receive pension benefits prior to meeting the requirements for a regular pension if they have reached the age of 65 and have attained their tenth anniversary of participation in the Plan without a break in participation. The benefit amount is based on hours worked in a plan year and the payment method selected.

Participants receive benefits in the form of a regular monthly lifetime annuity, a 50 percent joint and survivor annuity, or an amount up to a 50 percent lump sum distribution of the actuarial equivalent of their accumulated benefits and a 50 percent monthly lifetime annuity thereafter.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

NOTES TO FINANCIAL STATEMENTS
(Continued)

1. Description of the Plan (Continued)

B. Pension Benefits (Continued)

Effective March 1, 1981, the Plan was amended to provide pension disability benefits for employees who are totally and permanently disabled prior to attaining age 62 and ten years of pension credit. The term "total and permanent disability" is defined as the inability to engage in any substantial gainful activity in the hotel, restaurant, and bartending industry.

An employee must meet an active service requirement of at least 300 hours during the period which includes the calendar year of disability and the year prior to the disability and must have at least five years of pension credit. The benefits provide for monthly disability payments as calculated from an "earned benefits schedule", which is based on the hours worked in a plan year. The employee may elect a 50 percent joint and survivor annuity benefit.

C. Plan Termination

While they have not expressed any intention to do so, the Trustees have the right under the Trust Agreement to terminate the Trust. In the event the Trust is terminated, the assets remaining after providing for the expenses of the Plan will be allocated to provide benefits as allowed by the Plan and Employee Retirement Income Security Act of 1974 (ERISA).

D. Funding

The Trustees have determined the benefit levels such that all employees pension benefits are fully funded by the time the benefits become due. Periodically, the Trustees have an actuarial valuation of the Trust prepared and consider the actuarial status of the fund in determining modifications of benefit levels. The Trust is subject to the minimum funding standards of ERISA beginning in 1978, including a requirement that annual contributions be sufficient to amortize the unfunded accrued liability of the Plan over a maximum period of 40 years from January 1, 1978 (see Note 3).

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

NOTES TO FINANCIAL STATEMENTS
(Continued)

2. Summary of Significant
Accounting Policies

A. Employer Contributions

Employer contributions are usually paid the following month for hours worked in the previous month by eligible employees. Contributions are included as additions to net assets in the year the hours are worked. Contributions due from employers at year end are based on hours worked by eligible employees in December and delinquent contributions.

B. Valuation of Marketable
Securities

Securities traded on a national securities exchange are valued at the last reported sales price on the last business day of the year. Unrealized gains and losses resulting from the valuation of the securities and realized gains and losses from the sale of securities, on a last-in first-out cost basis, are recognized in the statement of changes in net assets available for benefits. Security transactions are accounted for on the date the securities are purchased or sold. Interest on bonds is accrued as earned and dividend income and distributions are recorded as of the ex-dividend date.

C. Real Estate Loan
Classification

The Trust follows a policy of classifying real estate loans as either earning or non-earning. A loan is considered non-earning when interest remains uncollected 60 days after it is due or when other factors make collection of the loan doubtful.

D. Valuation of Real
Estate Loans

The fair value of the non-earning real estate loans has been estimated by valuing the assets collateralizing the loans as represented by appraisals and/or the present value of future cash receipts (net of disbursements) discounted at prevailing interest rates for similar investments. Earning real estate loans have been valued on the basis of their future principal and interest payments.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

NOTES TO FINANCIAL STATEMENTS
(Continued)

2. Summary of Significant
Accounting Policies (Continued)

E. Real Estate Loan Costs

The Trust makes certain disbursements to preserve or improve its interest in collateral relating to real estate loans (see Notes 7 and 8) which are in the process of foreclosure.

Disbursements for payment of delinquent property taxes, direct development costs to prepare properties for sale, payments for other secured lien holders in the subject properties and similar costs are accounted for as additional advances on the real estate loans. Disbursements for investment manager fees, attorney fees, appraisal costs, real estate consultant fees, engineering fees and other similar costs are recorded as expenses.

3. Actuarial Present Value of
Accumulated Plan Benefits

Accumulated plan benefits are those future periodic payments, including lump-sum distributions, that are attributable under the Plan's provisions to the service the employees have rendered. Accumulated plan benefits include benefits expected to be paid to (a) retired or terminated employees or their beneficiaries, (b) beneficiaries of employees who have died, and (c) present employees or their beneficiaries.

The actuarial present value of accumulated plan benefits, determined by the Martin E. Segal Company, an independent firm of consultants and actuaries, is the amount that results from applying actuarial assumptions to adjust the accumulated plan benefits to reflect the time value of money (through discounts for interest) and the probability of payment (for retirement or disability) between the valuation date and the expected date of payment.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

NOTES TO FINANCIAL STATEMENTS
(Continued)

3. Actuarial Present Value
of Accumulated Plan
Benefits (Continued)

The significant actuarial assumptions used in the valuations as of December 31, 1979 are as follows:

Mortality rates:	1971 Group Annuity Mortality Table (separate male and female tables) with ages set forward one year.
Retirement age:	62, or completion of service requirement if later.
Net investment return:	6 percent per annum.
Contribution income:	Annual average of 1,800 hours of income per active employee included in valuation, and an hourly contribution rate of 40 cents in 1980.
Administrative expenses:	\$1,150,000 for 1980.
Funding method:	Entry age normal cost.
Termination rates before retirement:	A scale by age and sex ranging from 2.2 percent for women age 60 to 12.0 percent for women age 20 and 3.1 percent for men age 60 and 8.0 percent for men age 20.

These actuarial assumptions are based on the presumption the Plan will continue. Were the Plan to terminate, different actuarial assumptions and other factors might be applicable in determining the actuarial present value of accumulated plan benefits.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

NOTES TO FINANCIAL STATEMENTS
(Continued)

3. Actuarial Present Value
of Accumulated Plan
Benefits (Continued)

The accumulated plan benefits at December 31, 1979 are as follows:

Actuarial present value of accumulated
plan benefits:

Vested benefits:

Participants currently receiving
payments

\$ 12,074,000

Other participants

57,841,000

69,915,000

Nonvested benefits

31,809,000

\$101,724,000

As of December 31, 1979, the Trust had no unfunded vested liability for the purpose of assessing employers who withdraw from the Plan in accordance with the Multi-employer Pension Plan Amendment Act of 1980. The Trust meets minimum funding standards at December 31, 1980 as defined by ERISA, assuming the Trust is a qualified tax exempt plan (Note 11).

4. Marketable Securities

Investments in marketable securities are summarized as follows:

	1980		1979	
	Cost	Market	Cost	Market
Government and agency debt	\$17,325,000	\$15,594,000	\$11,423,000	\$10,310,000
Corporate bonds	20,184,000	16,737,000	12,563,000	10,818,000
Commercial paper	11,051,000	11,051,000	10,876,000	10,876,000
Common stock	<u>25,186,000</u>	<u>34,180,000</u>	<u>17,042,000</u>	<u>20,264,000</u>
	<u>\$73,746,000</u>	<u>\$77,562,000</u>	<u>\$51,904,000</u>	<u>\$52,268,000</u>

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUSTNOTES TO FINANCIAL STATEMENTS
(Continued)5. Litigation Concerning Real
Estate Loans

Since 1973 the Trust has engaged in various financial transactions with several of the entities owned, controlled by, or affiliated with Morris A. Shenker. These transactions include loans and loan commitments made to the entities and guarantees of loans made by others to the entities. The loans were made to Sierra Charter Corporation of Nevada and Murrieta Hot Springs. These loans may have benefited other companies owned or controlled by Morris Shenker.

According to the Dunes Hotel and Casinos, Inc. (Dunes) 1980 Form 10-K document filed with the Securities and Exchange Commission, Mr. Shenker, through various entities, owns more than forty percent of and is an officer of the Dunes. The Dunes through a wholly-owned subsidiary of M & R Corporation owns the Dunes Hotel and Country Club in Las Vegas, Nevada which employs Trust participants and is a contributor to the Trust.

On March 23, 1977, the Trust applied to the United States Department of Labor (DOL) and the Internal Revenue Service (IRS) for an exemption under Section 408(a) of ERISA and Section 4975(c)(2) of the Code. An exemption was requested for each of the present and former Trustees, the parties to the agreement establishing the Trust, Mr. Shenker, and any entities owned, controlled by, or affiliated with Mr. Shenker. The exemption covered financial transactions engaged in by the Trust with Mr. Shenker and the entities owned, controlled by, or affiliated with Mr. Shenker. The application contended that Mr. Shenker was not a party-in-interest and that the exemption was requested solely for the sake of completeness and as a protective measure in the event the DOL or IRS took an opposing position. This exemption request was denied.

On March 30, 1977, the Secretary of Labor of the United States filed a civil action (Marshall v. Schmoutey) in the United States District Court, District of Nevada, with the Trust as an involuntary plaintiff and naming as defendants certain past and present Trustees, Morris A. Shenker, Murrieta Hot Springs, Sierra Charter Corporation of Nevada, and other corporations owned and/or controlled by Mr. Shenker. In the action, the DOL claimed that the Trustees had breached their fiduciary obligations with respect to the Trust by failing to make the loans prudently

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

NOTES TO FINANCIAL STATEMENTS
(Continued)

5. Litigation Concerning Real
Estate Loans (Continued)

and failing to diversify the Trust assets, and that the Trustees had engaged in prohibited transactions with Mr. Shenker and entities owned, controlled by, or affiliated with Mr. Shenker. The DOL also contended that Mr. Shenker is a party-in-interest as described in Section 3(14)(h) of the Employee Retirement Income Security Act of 1974 and a disqualified person as described in Section 4975(e)(2)(H) of the Internal Revenue Code of 1954 as amended (the Code). Extensions of credit to or the use of plan assets for the benefit of a party-in-interest or a disqualified person (hereinafter collectively referred to as "party-in-interest") is a prohibited transaction under ERISA and the Code. The Trustees have denied the allegations and have pursued a vigorous defense.

The Secretary of Labor filed a motion for a preliminary injunction against the then acting Trustees on March 30, 1977. The Secretary sought to enjoin the Trustees from advancing additional funds to Mr. Shenker's entities and to remove the acting Trustees and appoint a receiver.

As a settlement of the motion for a preliminary injunction, on August 30, 1977, the court approved a stipulation appointing Upper Avenue Bank of Chicago, Illinois as investment manager. The Investment Manager took control of the Trust's real estate assets and a portion of the cash assets, and was given discretionary authority to manage, acquire or dispose of the assets under its control. The Investment Manager is a fiduciary under ERISA. The Secretary of Labor also agreed not to pursue further preliminary injunctive relief against the Trustees.

As required by the stipulation, on March 6, 1978, the Investment Manager submitted an Asset Management Plan recommending implementation of a "work-out" of the real estate related loans on a selective basis over a period of four to five years or longer. This Asset Management Plan was approved by the parties to the stipulation.

On December 30, 1977, the Investment Manager requested exemptions from the DOL and IRS under Section 408(a) of ERISA and Section 4975(c)(2) of the Code. Both exemptions were sought so that the Investment Manager could engage in

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

NOTES TO FINANCIAL STATEMENTS
(Continued)

5. Litigation Concerning Real
Estate Loans (Continued)

transactions or arrangements with parties-in-interest as a part of his work-out of the real estate loans, some of which were transactions with alleged parties-in-interest. The exemptions apply only to future transactions of the Investment Manager during his period of appointment and do not exempt any prohibited transactions the Trust may have been involved in prior to the granting of the exemption. The exemptions were approved on June 26, 1978.

Effective May 2, 1979, Thomas L. Karsten Associates (Karsten) succeeded Upper Avenue Bank as Investment Manager for the Trust. Karsten will continue implementation of the procedures outlined in the Asset Management Plan. In order that this implementation might be accomplished, on February 13, 1979, Karsten requested an exemption from the DOL and IRS similar to that granted Upper Avenue Bank permitting future transactions with parties-in-interest as a part of the work-out of the real estate related loans. Karsten's exemption was granted on April 18, 1979.

6. Real Estate Loans - Earning

Earning real estate loans consist of a syndicated loan with Paul and Kathryn Goodman dated December 14, 1972. The loan is payable in monthly installments through September 1, 1993, bears interest at 8-1/4 percent and is collateralized by real estate in Las Vegas, Nevada.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUSTNOTES TO FINANCIAL STATEMENTS
(Continued)7. Real Estate Loans - Non-earning

The non-earning real estate loans are summarized as follows:

	First Murrieta Loan	Second Murrieta Loan	Sierra Charter Loans (including addendums)	Total
Balance, January 1, 1979	\$2,102,000	\$5,149,000	\$18,228,000	\$25,479,000
Repayments	-	-	(1,605,000)	(1,605,000)
Additional advances	-	61,000	4,052,000	4,113,000
Balance, December 31, 1979	2,102,000	5,210,000	20,675,000	27,987,000
Repayments	-	(2,000)	(453,000)	(455,000)
Additional advances	-	75,000	1,936,000	2,011,000
Balance, December 31, 1980	<u>\$2,102,000</u>	<u>\$5,283,000</u>	<u>\$22,158,000</u>	<u>\$29,543,000</u>

On January 1, 1976, the Trust elected to stop recording interest on these loans. The unrecorded interest at December 31, 1980 and 1979 was \$16,783,000 and \$12,497,000, respectively.

Murrieta Hot Springs (Murrieta) is a California corporation that owns property just east of the community of Murrieta, Riverside County, California. The property consists of a central hotel resort area, improved mobile home and residential lots, and certain vacant parcels of land. On March 24, 1973, the Trust loaned Murrieta \$2,000,000, payable over 10 years at an interest rate of 1-1/2 percent above the prime interest rate, not to exceed 10 percent per annum (First Murrieta Loan). The loan was secured by deeds of trust on parcels of properties. On June 30, 1973, the Trust loaned an additional \$5,000,000 to Murrieta payable over 10 years not to exceed 9 percent per annum (Second Murrieta Loan). This loan was secured by a deed of trust on a parcel of property. Both the First and Second Murrieta Loans were in default by the middle of 1975. Subsequently, Murrieta agreed to change the interest rate on both notes to 10 percent per annum.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUSTNOTES TO FINANCIAL STATEMENTS
(Continued)7. Real Estate Loans - Non-earning

On August 26, 1976, Valley Bank of Nevada (Valley Bank) and Murrieta agreed to increase an existing \$1,240,000 warehouse line of credit (Warehouse Agreement) by an additional \$1,000,000. This line of credit was secured by first deeds of trust on certain lots located in Murrieta (lot paper). The Trust was also a signatory to the Warehouse Agreement. Valley Bank contended that pursuant to this agreement the Trust was obligated to replace delinquent lot paper collateralizing the Warehouse Agreement with non-delinquent lot paper held by the Trust as a result of the First Murrieta Loan (see Note 8 for settlement of the guarantee).

On June 7, 1974, the Trust agreed to loan to Sierra Charter Corporation of Nevada (Sierra) \$8,000,000 payable over ten years, bearing interest at 1-1/2 percent above prime, not to exceed 11 percent per annum (First Sierra Loan). Eventually \$7,450,000 was loaned to Sierra under this agreement. This loan was guaranteed personally by Morris Shenker. On July 28, 1975, the Trust loaned an additional \$1,350,000 under an Addendum to, and Modification of, the First Sierra Loan Agreement (First Addendum). Sierra also agreed to guarantee payment of interest only on the First and Second Murrieta Loans for a period of two years.

On December 1, 1975, the Trust and Sierra entered into a Second Addendum and Modification to the previous loan agreements (Second Addendum). It was agreed that all amounts owed to the Trust by Sierra under the First Sierra Loan and First Addendum would bear interest at 11 percent per annum. Pursuant to the Second Addendum, the Trust loaned additional sums to Sierra totaling \$9,130,000 bearing interest at 11 percent per annum. Sierra also agreed to guarantee all of Murrieta's indebtedness to the Trust and to change the interest rate on these loans to 10 percent. Murrieta also agreed to this change. Under the Second Addendum all advances to Sierra were personally guaranteed by Mr. Shenker.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

NOTES TO FINANCIAL STATEMENTS
(Continued)

8. Investment Manager Activity

Effective March 6, 1978, the Trust and Investment Manager began implementing the work-out of the non-earning real estate related loans of the Trust. The First Murrieta Loan was collateralized by first deeds of trust (lot paper) on 165 mobile home sites and 46 residential lots in Murrieta. Certain other mobile home site lot paper covering 14 additional lots was assigned to the Trust as a result of the delinquent Sierra loans. Appraisals of these lots conducted in August 1979 and August 1980 indicated an estimated value of approximately \$2,600,000 and \$2,400,000, respectively, and in May 1981 the appraisals ranged from \$3,800,000 to \$4,500,000. The Trust also has a third deed of trust on 320 acres of land near Murrieta. This land was appraised in August 1979 at \$800,000, in August 1980 at \$960,000 and in May 1981 at \$1,000,000 and is subject to two prior deeds of trust.

The Second Murrieta Loan was collateralized by a first deed of trust on a 564 acre parcel of land. This land was appraised at \$2,370,000 in June 1979 and from \$3,400,000 to \$4,600,000 in May 1981.

Valley Bank contended that the Trust, as a result of the Warehouse Agreement relating to Murrieta (see Note 7), was obligated to exchange certain lot paper in its possession for lot paper in the possession of Valley Bank. On April 19, 1979, Valley Bank declared that the Warehouse Agreement was in default, and declared the principal and accrued interest (\$2,517,000 on that date) due and payable. As a result, on May 30, 1979, the Trust filed an adversary complaint in Bankruptcy Court alleging that the Warehouse Agreement was a violation of ERISA and invalid, and that the Trust has a valid lien on the subject lots. On November 26, 1979, an agreement between Valley Bank and the Trust was entered into which requires that (a) the Trust be relieved of its guarantee to pay the loan; (b) Valley Bank is not entitled to exchange its collateralized lot paper with the Trust's lot paper; and (c) the Trust assigned to Valley Bank 465 acres of land near Genoa Peak, northwest of Gardnerville, which was appraised at \$150,000 in February 1978.

In March 1978, certain creditors filed an involuntary bankruptcy petition against Murrieta. This resulted in an automatic stay preventing foreclosure on the deeds of trust and lot papers held by the Trust. On April 9, 1979, Murrieta was adjudicated bankrupt.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUSTNOTES TO FINANCIAL STATEMENTS
(Continued)8. Investment Manager Activity
(Continued)

In August 1979, the court vacated the portion of the stay covering the 564 acre parcel at Murrieta. In September 1980, the Bankruptcy Court adjudged that the Trust had a valid first deed of trust on Murrieta Hot Springs Hotel and Spa consisting of approximately 45 acres and various improvements. This property was appraised in November 1980 at \$2,585,000 before delinquent real estate taxes of approximately \$1,100,000. The taxes are being paid on an installment basis over five years starting in April 1981.

In February 1981, the Trust acquired in a Bankruptcy Court sale the following: 15 mobile home lots, lot paper on 162 mobile home lots and 46 residential lots, the Murrieta Hot Springs Hotel and Spa and 320 acres of vacant land. In April 1981, foreclosure proceedings were completed on a substantial portion of the lot paper and the Trust acquired title to the property.

The Trust has also obtained interests in certain other assets as a result of various other loans. The Trust's interest in these assets is of varying types and degrees of priority. Not all of the Trust's rights under these interests have been or necessarily will be exercised, rather the Trust's actions with regard to these assets will be based on obtaining the maximum foreseeable fair value as outlined in the Asset Management Plan.

As security for portions of the Sierra loans, the Trust has an interest in portions of the Tahoe Comstock Development (Comstock) near Gardnerville, Nevada. Land sale contracts and notes secured by first deeds of trust (lot paper) in Comstock were assigned to the Trust as security for indebtedness of Sierra. Approximately 650 separate contracts are assigned to the Trust but in many instances the lot paper is subject to a prior assignment to other Sierra creditors, principally General Electric Credit Corporation. Such lot paper subject to prior assignment will revert to the Trust when payments received on the land sale notes exceed the principal and interest due other Sierra creditors. The Trust received payments on the lot paper that were assigned directly to them in the amount of \$162,000 in 1979 and \$183,000 in 1980.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUSTNOTES TO FINANCIAL STATEMENTS
(Continued)8. Investment Manager Activity
(Continued)Gardnerville Ranchos - Units 6 and 7

During 1978 and 1979, the Trust, the Investment Manager, Shenker and Sierra entered into certain Supplemental Agreements which gave the Trust certain interests in Comstock properties. The Trust has a fee estate in the unsold lots (approximately 1,000 lots) in Units 6 and 7 of Gardnerville Ranchos, a development within Comstock. On March 2, 1979, the Trust, the Investment Manager, Valley Bank, Paul Heck and Gardnerville Development Company entered into various agreements (Gardnerville Agreement) with the intent that Heck would complete the development of Units 6 and 7, and would build houses on the unsold lots and sell them to the public. Gardnerville Development Company, Inc. assigned its rights under the agreement to a joint venture consisting of itself and two other Companies. The term "Heck" means Paul Heck, Gardnerville Development Company and the joint venture. The major aspects of the Gardnerville Agreement are as follows:

(a) The Trust transferred its fee estate in the unsold lots to Valley Bank which in turn conveyed it to Title Insurance and Trust Company pursuant to a holding agreement.

(b) Valley Bank loaned \$3,600,000 to Heck for payment of certain bond assessments currently outstanding against the property and for completion of all off-site improvements to Units 6 and 7.

(c) The Trust has paid all delinquent and current interest on a \$2,450,000 loan from Valley Bank to Sierra dated May 25, 1976 which was guaranteed by the Trust (Valley Bank Guarantee, see Note 7). The principal balance of this note was approximately \$1,663,000 at March 2, 1979. Delinquent and current interest paid through March 31, 1979 by the Trust totaled approximately \$273,000.

(d) The Trust agreed to advance funds for utility deposits, certain bond assessments, real estate taxes currently outstanding, costs of off-site improvements, and certain other fees. The funds were advanced in March 1979.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUSTNOTES TO FINANCIAL STATEMENTS
(Continued)8. Investment Manager Activity
(Continued)

(e) The Valley Bank Loan of \$3,600,000 and the Valley Bank Guarantee of \$1,663,000 are secured by a first deed of trust on the property.

(f) The Trust has a second deed of trust on the property for \$8,000,000, plus any advances made by the Trust for taxes, bond assessments, construction costs, etc. not to exceed \$5,000,000.

(g) The Trust is responsible for paying all real estate taxes, bond assessments, etc. on the unsold lots until they are sold, and for making interest payments on the Valley Bank Guarantee and the \$3,600,000 Valley Bank loan at 12 percent per annum on the unpaid balances.

(h) Heck was required to purchase a certain number of lots each year. Heck failed to fulfill his purchase obligations and in 1980, the Trust terminated the agreement with Heck and commenced a lawsuit against Heck and his partners for judicial determination that the contract has been validly terminated. The complaint also seeks damages. The outcome of the lawsuit is indeterminable at this time.

This property was appraised in May 1981 at \$5,025,000.

Gardnerville Ranchos - Units 8 and 9

The Trust also holds a fee estate in Units 8 and 9 of Gardnerville Ranchos (Comstock). These units are unplotted and undeveloped and were appraised at \$2,000,000 in August 1979 and in November 1980. The actual value of this land depends, to a large extent, on whether the adjacent Units 6 and 7 are developed as planned.

Other Sierra Charter Interests

Sierra assigned to the Trust its interest in two mortgages held by Sierra on two land parcels near Albuquerque, New Mexico. These two developments, Volcano Cliffs and Meadow Lakes, were sold in April 1979, and the Trust received approximately \$966,000 as a result of these sales in return for retiring the mortgage notes thereon.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

NOTES TO FINANCIAL STATEMENTS
(Continued)

8. Investment Manager Activity
(Continued)

Other Sierra Charter Interests
(Continued)

Sierra held 40,625 shares of stock in Home Savings Association, a Nevada savings and loan association. In December 1977, the Trust took possession of the stock after paying \$156,000 on a loan on which these shares served as collateral. In March 1979, these shares were sold for approximately \$638,000.

Sierra assigned to the Trust its one-half interest (1,250 shares) of the outstanding stock of the Carson Valley Country Club, Inc. In 1979, this stock was sold for \$175,000.

The Trust has an interest in various other assets of Sierra as a result of the Second Addendum Sierra loan. These include the following:

(a) A mortgage and note covering a golf course and approximately 500 vacant lots near Truth or Consequences, New Mexico. In April 1980, the Pension Trust foreclosed on the mortgage and became the owner of the property.

(b) In 1980, pursuant to a restructuring of the indebtedness, the Trust acquired a fee estate in 520 acres of land in Lincoln County, Oregon, subject to a deed of trust of \$802,000, which was discounted \$160,000 to \$642,000 and paid by the Trust in April 1981. The appraised value in December 1979 was approximately \$1,200,000.

In 1980, the property was annexed to Lincoln City and designated in the Lincoln City Comprehensive Plan as residential property. The Comprehensive Plan is subject to review by the State Land Conservation and Development Commission.

(c) Vacant property in Nevada County, California, (Prosser Lake Heights). The appraised value in December 1979 was approximately \$180,000.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUSTNOTES TO FINANCIAL STATEMENTS
(Continued)9. Contingent Assets

Sierra holds unsecured notes from I.J.K. Nevada, Inc. for approximately \$1,000,000 and from Mr. Morris A. Shenker for approximately \$475,000. The Trust asserts a security interest in these notes pursuant to the Second Addendum (see Note 7). Additionally, the Investment Manager asserts that Mr. Shenker is liable for both the Sierra and Murrieta real estate loans.

In February 1980, the Court granted the Investment Manager the right to intervene in the Marshall v. Schmoutey litigation to take action against Sierra, I.J.K. Nevada, Inc. and Mr. Shenker. The Investment Manager's complaint in the intervention seeks recovery from Sierra, I.J.K. Nevada, Inc. and Mr. Shenker of all loans and advances to Sierra and Murrieta. The complaint states that as of September 30, 1979 the principal and interest on all loans and advances to Sierra and Murrieta was approximately \$41,000,000.

Sierra, I.J.K. Nevada, Inc. and Mr. Shenker have filed a counterclaim, naming the Investment Manager as counterdefendant. The counterclaim alleges that the Trust breached certain loan agreements with Sierra causing Sierra to be unable to fulfill its repayment obligations and alleges that Sierra transferred sufficient assets to the Trust to discharge its indebtedness but that the Trust and its agents improperly managed those properties and decreased their value. The counterclaim requests if the Investment Manager obtains any judgment against Sierra or Mr. Shenker, the Trust or the Investment Manager should be required to reimburse Mr. Shenker for any payment of such judgment.

The notes receivable from Mr. Shenker and I.J.K. Nevada, Inc. along with Mr. Shenker's guarantees are considered contingent assets because their value is presently undeterminable and, accordingly, no value has been assigned to these items.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

NOTES TO FINANCIAL STATEMENTS
(Continued)

10. Administration Fees

The records of the Trust were maintained by West Coast Employee Benefits Services from 1972 through July 31, 1980. For the years ended December 31, 1980 and 1979 the Trust paid West Coast \$457,000 and \$671,000, respectively, for maintaining the records, collecting the receipts and processing the retirement payments.

In May 1980, the Trustees appointed a new administrator, American Benefit Plan Administrators, Inc. (ABPA), to maintain the records of the Trust. ABPA began administration of the Trust on August 1, 1980 under a three year contract. The Trust paid ABPA \$230,000 for services performed from August 1, 1980 to December 31, 1980.

11. Tax Exempt Status of the Trust

During April 1978, the Internal Revenue Service (IRS) commenced an audit of the Trust. In June 1979, the IRS advised the Trust that its San Francisco District Office was recommending to the National Office that the Trust's tax exempt status under Section 401 of the Internal Revenue Code be revoked for the year 1974 and all subsequent years. This recommendation has been forwarded to the National Office with a Request for Technical Advice. The Trust initiated a suit in the Federal District Court to enjoin the IRS from further consideration of the issue. The Court denied the Trust's motion for preliminary injunction and granted the IRS's motion to dismiss. The Trust is currently appealing this decision. In the meantime, the Trust is presenting information to the IRS to demonstrate that the tax exempt status should not be revoked. In the event that a revocation takes place, the Trust would be required to pay income taxes, including penalties and interest, on its gross income for each year in which it is not tax exempt, which would result in a significant decrease in the Trust's assets. In August 1981, the Trust's counsel was orally informed by an Internal Revenue Agent that the National Office of the Internal Revenue Service had decided to terminate its consideration of possible revocation of the tax exempt status of the Trust. Counsel is currently waiting for written confirmation of this termination.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

SCHEDULE OF MARKETABLE SECURITIES

December 31, 1980

As of December 31, 1980			
Shares or par value	Description	Cost	Fair value
<u>Government and Agency Debt:</u>			
\$1,000,000	United States Treasury Bills, 10.30%, due 3-12-81	\$ 948,000	\$ 948,000
\$ 500,000	United States Treasury Notes, 13.25%, due 5-15-84	502,000	508,000
\$1,000,000	Federal National Mortgage Association, 16.625%, due 5-13-81	931,000	931,000
\$ 500,000	United States Treasury Notes, 7.875%, due 5-15-86	512,000	411,000
\$ 500,000	United States Treasury Notes, 6.875%, due 3-31-81	505,000	490,000
\$ 500,000	United States Treasury Notes, 7%, due 5-15-82	504,000	464,000
\$ 500,000	United States Treasury Notes, 8%, due 2-15-85	503,000	430,000
\$ 500,000	United States Treasury Notes, 12.125%, due 9-30-84	498,000	492,000
\$ 845,777	Government National Mortgage Association, Pool #18958, 8%, due 10-15-2007	828,000	602,000
\$ 870,991	Government National Mortgage Association, Pool #20225, 8%, due 10-15-2007	865,000	620,000
\$ 977,205	Government National Mortgage Association, Pool #32008, 9.5%, due 8-15-2009	955,000	762,000
\$ 957,926	Government National Mortgage Association, Pool #34677, 9.5%, due 9-15-2009	923,000	747,000
\$ 500,000	United States Treasury Bonds, 8%, due 8-15-2001	498,000	352,000
\$1,000,000	United States Treasury Notes, 11.875%, due 9-30-82	999,000	983,000
\$1,000,000	United States Treasury Notes, 12.125%, due 10-31-82	997,000	986,000
\$1,000,000	Federal Farm Credit Banks, Series B, 8.45%, due 4-1-82	1,000,000	941,000
\$1,000,000	Federal Farm Credit Bank, 11.75%, due 9-04-84	1,000,000	968,000

(Continued)

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST
SCHEDULE OF MARKETABLE SECURITIES
(Continued)

December 31, 1980

As of December 31, 1980			
Shares or par value	Description	Cost	Fair value
<u>Government and Agency Debt (Continued):</u>			
\$ 500,000	Federal National Mortgage Association, 8.20%, due 4-10-84	\$ 500,000	\$ 437,000
\$ 500,000	Federal National Mortgage Association, 8.60%, due 6-10-85	500,000	426,000
\$1,000,000	Federal National Mortgage Association, 12.25%, due 6-10-82	1,000,000	982,000
\$ 500,000	Federal Land Banks, 8.20%, due 1-22-90	500,000	380,000
\$ 500,000	Federal National Mortgage Association, 9.75%, due 9-10-84	500,000	455,000
\$ 520,000	United States Treasury Bills, 16.3%, due 3-19-81	499,000	504,000
\$ 992,964	Government National Mortgage Association, Pool #35097, 9.5%, due 10-15-2009	858,000	775,000
		<u>17,325,000</u>	<u>15,594,000</u>
<u>Corporate Bonds:</u>			
\$ 300,000	Armco Steel Corporation, Registered Debentures, 9.20%, due 7-15-2000	300,000	204,000
\$ 250,000	Atlantic Richfield Company, 7.75%, due 12-15-2003	223,000	157,000
\$ 200,000	Bethlehem Steel Corporation, 8.45%, due 3-01-2005	200,000	123,000
\$ 500,000	Columbia Gas Systems Incorporated, 10.25%, due 5-01-99	468,000	405,000
\$ 200,000	Dow Chemical Company, 8.50%, due 2-01-2005	200,000	134,000
\$ 500,000	Ford Motor Company Notes, 14.75%, due 4-01-85	500,000	495,000
\$ 100,000	Ford Motor Credit Company, 9.50%, due 1-15-95	99,000	68,000
\$ 300,000	Ford Motor Credit Corporation, Debentures, 9.70%, due 7-15-2000	299,000	201,000

(Continued)

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

SCHEDULE OF MARKETABLE SECURITIES
(Continued)

December 31, 1980

As of December 31, 1980			
Shares or par Value	Description	Cost	Fair value
<u>Corporate Bonds (Continued):</u>			
\$ 300,000	Gardner-Denver Corporation, Sinking Fund Debentures, 9.25%, due 6-01-2005	\$ 304,000	\$ 288,000
\$ 250,000	General Motors Acceptance Corporation, Debentures, 7.75%, due 10-01-94	231,000	164,000
\$ 750,000	General Motors Acceptance Corporation, Debentures, 8.125%, due 10-15-96	662,000	515,000
\$ 500,000	Southern California Edison Company, 1st and Refunding Series NN, 15.125%, due 4-01-2005	496,000	530,000
\$ 500,000	Texas Instruments, Sinking Fund Debentures, 12.70%, due 2-01-2005	553,000	475,000
\$ 600,000	Norton Company, Convertible Subordinated Debentures, 9.50%, due 11-1-2005	600,000	679,000
\$ 250,000	Bell Telephone Company of Canada, 9%, due 1-15-2008	250,000	165,000
\$ 700,000	Beneficial Corporation, Debentures, 11.50%, due 1-15-1984/2005	698,000	658,000
\$ 250,000	Continental Illinois Corporation Note, 8.50%, due 11-01-85	249,000	208,000
\$ 250,000	European Investment Bank, 11.625%, due 1-01-87	248,000	230,000
\$ 250,000	Exxon Pipeline Company, Guaranteed Debentures, 8.25%, due 3-01-2001	256,000	173,000
\$1,000,000	First National Boston Corporation, 10.65%, due 8-15-87	1,000,000	877,000
\$1,100,000	Ford Motor Credit Company, 9.45%, due 6-15-89	1,035,000	770,000
\$ 500,000	General Electric Credit Corporation, 11.75%, due 4-15-88	499,000	475,000
\$ 250,000	General Motors Acceptance Corporation, 8.875%, due 7-15-85	249,000	215,000
\$ 250,000	General Motors Corporation, 8.05%, due 4-01-85	227,000	212,000
\$ 500,000	Girard Co., Floating Rate Notes, due 5-15-87	500,000	455,000

(Continued)

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

SCHEDULE OF MARKETABLE SECURITIES
(Continued)

December 31, 1980

As of December 31, 1980			
Shares or par Value	Description	Cost	Fair value
<u>Corporate Bonds (Continued):</u>			
\$ 300,000	Inland Steel Company, 1st Mortgage Series Q, 9.50%, due 9-01-2000	\$ 299,000	\$ 201,000
\$ 500,000	Inland Steel Company, 1st Mortgage Bond Series S, 11.25%, due 6-1-90	497,000	470,000
\$ 200,000	Monsanto, Sinking Fund Debentures, 8.50%, due 6-15-2000	199,000	140,000
\$ 500,000	Mountain States Telephone and Telegraph Company, 11.25%, due 11-01-2019	500,000	425,000
\$ 750,000	New York Telephone Company, 8.625%, due 6-15-2016	727,000	502,000
\$ 100,000	Owens-Corning Fiberglass, Sinking Fund Debentures, 9.50%, due 1-01-2000	99,000	78,000
\$ 100,000	Owens-Illinois, Sinking Fund Debentures, 9.35%, due 11-01-99	100,000	75,000
\$ 500,000	Pacific Telephone & Telegraph, Debentures, 9.625%, due 11-01-2014	500,000	345,000
\$ 300,000	Pfizer Incorporated, Sinking Fund Debentures, 9.25%, due 8-15-2000	298,000	219,000
\$ 500,000	South Central Bell Telephone, 8.25%, due 11-01-2015	485,000	317,000
\$ 500,000	Southern Bell Telephone & Telegraph Company, 8.25%, due 4-15-2016	470,000	317,000
\$ 400,000	Southern Bell Telephone & Telegraph Company, 8.125%, due 5-01-2017	398,000	258,000
\$ 250,000	Guaranty Savings & Loan Association, Mortgage Backed Bonds Series A, 8.45%, due 3-01-84	250,000	218,000
\$ 250,000	Household Finance Corporation, 8.50%, due 5-15-83	249,000	219,000
\$ 250,000	ICI North America Incorporated, Sinking Fund Debentures, 8.875%, due 1-15-2003	250,000	165,000
\$1,000,000	New York Telephone Company, 4.625%, due 1-01-2004	448,000	413,000

(Continued)

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST
SCHEDULE OF MARKETABLE SECURITIES
(Continued)

December 31, 1980

As of December 31, 1980			
Shares or par Value	Description	Cost	Fair value
<u>Corporate Bonds (Continued):</u>			
\$ 800,000	Philip Morris Incorporated, 9.55%, due 6-01-86	\$ 788,000	\$ 672,000
\$ 700,000	Security Pacific Corporation, 10.75%, due 6-15-84	700,000	641,000
\$ 500,000	Equitable Life Mortgage Realty Bonds, 12%, due 9-01-87	500,000	445,000
\$1,000,000	North American Philips Corporation, 11%, due 6-01-87	1,000,000	855,000
\$ 800,000	Ford Motor Credit Company Notes, 11.875%, due 6-01-83	800,000	728,000
\$ 250,000	Public Service of New Mexico, 1st Mortgage Bond, 9%, due 5-1-2008	251,000	168,000
		<u>20,184,000</u>	<u>16,737,000</u>
<u>Commercial Paper:</u>			
\$ 74,000	Institutional Liquid Asset Fund	74,000	74,000
\$ 18,000	Institutional Liquid Asset Fund	18,000	18,000
\$1,000,000	Western Electric Credit, 17.125%, due 1-06-81	983,000	983,000
\$1,000,000	Proctor & Gamble, 18.125%, due 1-15-81	979,000	979,000
\$1,000,000	Shell Oil Credit, 20.75%, due 1-26-81	974,000	974,000
\$ 175,000	General Motors Acceptance Corporation, 20%, due 1-15-81	175,000	175,000
\$ 395,000	General Electric Credit, 19.875%, due 1-20-81	395,000	395,000
\$1,000,000	H. J. Heinz, 19.625%, due 2-03-81	977,000	977,000
\$1,065,000	Mobil Oil Credit, 18%, due 1-05-81	1,048,000	1,048,000
\$1,705,000	General Electric Credit, 18.875%, due 1-12-81	1,705,000	1,705,000
\$2,265,000	Commercial Credit, 19.75%, due 2-19-81	2,265,000	2,265,000
\$ 500,000	Wachovia Bank, Bankers Acceptance, 20.25%, due 2-19-81	482,000	482,000

(Continued)

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

SCHEDULE OF MARKETABLE SECURITIES
(Continued)

December 31, 1980

As of December 31, 1980			
Shares or par Value	Description	Cost	Fair value
<u>Corporate Bonds (Continued):</u>			
\$ 500,000	1st National Bank of Oregon, Bankers Acceptance, 19.55%, due 3-16-81	\$ 476,000	\$ 476,000
\$ 500,000	Capistrano National Bank, Certificate of Deposit, 17.50%, due 3-03-81	500,000	500,000
		<u>11,051,000</u>	<u>11,051,000</u>
<u>Common Stock:</u>			
15,000	Abbott Laboratories	458,000	848,000
10,000	Allied Chemical Corporation	577,000	535,000
8,000	Aluminum Company of America	378,000	477,000
15,000	American Hospital Supply	647,000	722,000
15,750	Archer Daniels Midland	548,000	585,000
20,000	Atlantic Richfield Company	563,000	1,273,000
13,850	Big Three Industries	466,000	846,000
14,000	Burlington Northern	424,000	901,000
15,000	Chesebrough Ponds Incorporated	459,000	422,000
20,000	Combustion Engineering	387,000	932,000
11,000	Cooper Industries, Inc.	593,000	591,000
8,000	Fluor Corporation	475,000	360,000
5,000	Halliburton Company	589,000	417,000
10,000	Harris Corporation	410,000	521,000
10,000	Hewlett-Packard Company	445,000	895,000
15,000	Hospital Corporation of America	673,000	814,000
10,500	Hughes Tool Company	397,000	1,015,000
8,000	Ingersoll Rand	446,000	599,000
18,000	International Business Machines Corp.	997,000	1,086,000
20,000	Kaiser Steel Corporation	704,000	812,000
7,000	Kerr-McGee Corporation	513,000	553,000
10,000	Lubrizol Corporation	464,000	660,000
10,000	Mobil Corporation	539,000	807,000
10,000	Perkin Elmer Corporation	538,000	685,000
8,000	Raytheon Company	645,000	880,000
20,000	St. Joe Minerals Corporation	502,000	670,000

(Continued)

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

SCHEDULE OF MARKETABLE SECURITIES
(Continued)

December 31, 1980

As of December 31, 1980			
Shares or par Value	Description	Cost	Fair value
<u>Common Stock (Continued):</u>			
10,000	Santa Fe Industries	\$ 381,000	\$ 1,025,000
15,000	Schering-Plough Corporation	651,000	607,000
7,000	Schlumberger Limited	859,000	819,000
22,500	Signal Companies Incorporated	603,000	681,000
15,000	Smith International Incorporated	883,000	966,000
10,000	Standard Oil Company of Indiana	502,000	799,000
14,000	Standard Oil Company of Ohio	291,000	1,008,000
15,000	T.R.W. Incorporated	670,000	909,000
5,000	Texas Instruments	447,000	604,000
30,000	Union Oil Co. of California	508,000	1,339,000
10,000	Union Pacific Corporation	375,000	787,000
10,000	Upjohn Company	466,000	675,000
20,000	Weyerhaeuser Company	651,000	682,000
7,000	Xerox Corporation	362,000	419,000
8,000	American Cyanamid Company	221,000	261,000
4,000	Capital Cities Communication	240,000	235,000
10,000	Chesapeake Corporation of Virginia	235,000	261,000
10,000	Coca-Cola Bottling Company of Miami	238,000	277,000
6,000	Dresser Industries	210,000	321,000
7,000	Empire Gas Corporation	225,000	25,000
9,000	Gulf United Corporation	163,000	182,000
6,000	Kansas City Southern Industries, Inc.	244,000	292,000
3,000	Kerr-McGee Corporation	243,000	237,000
5,000	Walter Kidde & Co.	181,000	226,000
1,600	Missouri Pacific Corporation	149,000	164,000
6,000	Mountain Fuel Supply Company	204,000	287,000
6,000	Philip Morris Incorporated	245,000	260,000
7,000	Pitney Bowes, Inc.	233,000	238,000
9,000	Storer Broadcasting Company	237,000	262,000
7,000	Texas International Company	206,000	267,000
7,000	Westburne International Industries, Ltd.	226,000	141,000
		<u>25,186,000</u>	<u>34,170,000</u>
		<u>\$73,746,000</u>	<u>\$77,562,000</u>

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

SCHEDULE OF MARKETABLE SECURITIES

DECEMBER 31, 1980

As of December 31, 1979			
Shares or par value	Description	Cost	Fair value
<u>Government and Agency Debt:</u>			
\$ 500,000	United States Treasury Bonds, 8%, due 8-15-2001	\$ 498,000	\$ 407,000
\$ 500,000	United States Treasury Notes, 7.125%, due 11-15-80	497,000	479,000
\$1,000,000	Federal Farm Credit Banks Series B, 8.45%, due 4-1-82	1,000,000	946,000
\$ 500,000	Federal National Mortgage Association, 8.20%, due 4-10-84	500,000	451,000
\$ 500,000	Federal National Mortgage Association, 8.60%, due 6-10-85	500,000	455,000
\$ 500,000	Federal Land Banks, 8.2%, due 1-22-90	500,000	423,000
\$ 500,000	Federal National Mortgage Association, 9.75%, due 9-10-84	500,000	473,000
\$ 891,937	Government National Mortgage Association, Pool #20225CD, 8%, due 10-15-2007	886,000	727,000
\$ 886,762	Government National Mortgage Association, Pool #18958, 8%, due 10-15-2007	868,000	723,000
\$ 995,663	Government National Mortgage Association, Pool #32006, 9.50%, due 8-15-2009	973,000	876,000
\$1,006,093	Government National Mortgage Association, Pool #34677, 9.50%, due 9-15-2009	970,000	886,000
\$ 300,000	United States Treasury Bonds, 7.875%, due 2-15-2000	302,000	242,000
\$ 500,000	United States Treasury Notes, 7.875%, due 5-15-86	512,000	442,000
\$ 500,000	United States Treasury Notes, 6.875%, due 3-31-81	504,000	474,000
\$ 500,000	United States Treasury Notes, 7%, due 5-15-82	504,000	463,000
\$ 500,000	United States Treasury Notes, 7.125%, due 11-15-80	498,000	479,000
\$ 500,000	United States Treasury Notes, 8%, due 2-15-85	503,000	454,000
\$ 935,000	United States Treasury Bill, 11.75%, due 3-20-80	908,000	910,000
		<u>11,423,000</u>	<u>10,310,000</u>

(Continued)

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

SCHEDULE OF MARKETABLE SECURITIES
(Continued)

DECEMBER 31, 1980

As of December 31, 1979			
Shares or par value	Description	Cost	Fair value
<u>Corporate Bonds:</u>			
\$ 250,000	Bell Telephone Company of Canada, 9%, due 1-15-2008	\$ 250,000	\$ 194,000
\$ 700,000	Beneficial Corporation Debentures, 11.50%, due 1-15-1984/2005	698,000	652,000
\$ 250,000	Continental Illinois Corporation Note, 8.5%, due 11-1-85	249,000	217,000
\$ 250,000	Exxon Pipeline Company, Guaranteed Debentures, 8.25%, due 3-1-2001	256,000	200,000
\$ 700,000	Ford Motor Credit Company, 9.45%, due 6-15-89	700,000	610,000
\$ 250,000	General Motors Acceptance Corporation, 8.875%, due 7-15-85	249,000	221,000
\$ 500,000	Girard Co., Floating Rate Notes, 11.50%, due 5-15-87	500,000	495,000
\$ 250,000	Household Finance Corporation, 8.5%, due 5-15-83	249,000	229,000
\$ 250,000	I.C.I. North America, 8.375%, due 1-15-2003	250,000	219,000
\$ 600,000	Philip Morris, Inc., 9.55%, due 6-1-86	600,000	561,000
\$ 500,000	Southern Pacific Transportation Company, 10.35%, due 7-1-1994	457,000	450,000
\$ 250,000	Guaranty Savings & Loan Association, Mortgage Backed Bonds, Series A, 8.45%, due 3-1-84	250,000	224,000
\$ 500,000	Equitable Life Mortgage Realty Bonds, 12%, due 9-1-87	500,000	472,000
\$ 250,000	Public Service of New Mexico, 9%, due 5-1-2008	251,000	196,000
\$ 300,000	Armco Steel Corporation, Registered Debentures, 9.20%, due 7-15-2000	300,000	270,000
\$ 250,000	Atlantic Richfield Company, 7.75%, due 12-15-2003	223,000	185,000
\$ 500,000	Southern Bell Telephone & Telegraph Company, 8.25%, due 4-15-2016	470,000	380,000

(Continued)

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

SCHEDULE OF MARKETABLE SECURITIES
(Continued)

DECEMBER 31, 1980

As of December 31, 1979			
Shares or par value	Description	Cost	Fair value
Corporate Bonds (Continued):			
\$ 400,000	Southern Bell Telephone & Telegraph Company, 8.125%, due 5-1-2017	\$ 398,000	\$ 299,000
\$ 500,000	Wisconsin Telephone Company, 8.25%, due 11-15-2016	480,000	375,000
\$ 500,000	Mountain States Telephone and Telegraph, 11.25%, due 11-1-2019	500,000	502,000
\$ 200,000	Bethlehem Steel Corporation, 8.45%, due 3-1-2005	200,000	145,000
\$ 200,000	Dow Chemical Company, 8.50%, due 2-1-2005	200,000	156,000
\$ 100,000	Ford Motor Credit Company, 9.50%, due 1-15-95	99,000	87,000
\$ 300,000	Ford Motor Credit Corporation, Debentures, 9.70%, due 7-15-2000	299,000	261,000
\$ 300,000	Gardner-Denver Corporation, Sinking Fund Debentures, 9.25%, due 6-1-2005	304,000	246,000
\$ 250,000	General Motors Acceptance Corporation, Debentures, 7.75%, due 10-1-94	231,000	188,000
\$ 750,000	General Motors Acceptance Corporation, Debentures, 8.125%, due 10-15-96	692,000	577,000
\$ 300,000	Inland Steel Company, 1st Mortgage Series Q, 9.50%, due 9-1-2000	299,000	243,000
\$ 200,000	Monsanto Sinking Fund Debentures, 8.50%, due 6-15-2000	199,000	157,000
\$ 750,000	New York Telephone Company, 8.625%, due 6-15-2016	727,000	589,000
\$ 100,000	Owens-Corning Fiberglass, Sinking Fund Debentures, 9.50%, due 1-1-2000	99,000	88,000
\$ 100,000	Owens-Illinois Sinking Fund Debentures, 9.35%, due 11-1-99	100,000	84,000
\$ 400,000	Pacific Telephone & Telegraph, Debentures, 9.625%, due 11-1-2014	500,000	401,000
\$ 300,000	Pfizer, Incorporated, 9.25%, due 8-15-2000	299,000	270,000
\$ 500,000	South Central Bell Telephone, 8.25%, due 11-1-2015	485,000	375,000
		<u>12,563,000</u>	<u>10,818,000</u>

(Continued)

SOUTHERN NEVADA CULINARY AND
RAFTENDERS PENSION TRUST
SCHEDULE OF MARKETABLE SECURITIES
(Continued)

DECEMBER 31, 1980

As of December 31, 1979			
Shares or par value	Description	Cost	Fair value
<u>Commercial Paper:</u>			
\$1,490,000	General Motors Acceptance Corporation, 14%, due 1-4-80	\$ 1,490,000	\$ 1,490,000
\$3,243,000	International Harvester Credit, 13.125%, due 1-10-80	3,243,000	3,243,000
\$ 650,000	General Electric Credit, 13%, due 1-15-80	650,000	650,000
\$ 900,000	Beatrice Foods, 13%, due 1-9-80	889,000	889,000
\$1,300,000	Ralston Purina, 13.125%, due 1-16-80	1,282,000	1,282,000
\$ 333,000	Ford Motor Credit, 13.375%, due 1-15-80	333,000	333,000
\$1,000,000	Caterpillar Tractor Credit, 13.80%, due 1-11-80	989,000	989,000
\$ 900,000	Ford Motor Credit, 13.60%, due 2-11-80	900,000	900,000
\$1,100,000	General Motors Acceptance Corporation, 13.50%, due 1-30-80	1,100,000	1,100,000
		<u>10,876,000</u>	<u>10,876,000</u>
<u>Common Stock:</u>			
4,000	Allied Chemical Corporation	168,000	197,000
4,000	Chesapeake Corporation of Virginia	185,000	95,000
9,000	Enserch Corporation	241,000	262,000
4,000	Gatx Corporation	158,000	147,000
6,000	G. K. Technologies	106,000	145,000
8,000	Fred S. James & Company, Inc.	201,000	202,000
7,000	Kaneb Services	140,000	162,000
2,000	Merck & Company, Incorporated	139,000	144,000
6,000	Occidental Petroleum	161,000	163,000
5,000	Ohio Casualty Corporation	177,000	177,000
5,000	Phelps Dodge Corporation	126,000	154,000
4,000	Phillips Petroleum	167,000	192,000
1,500	Smithkline Corporation	69,000	105,000
2,500	Sun Company, Incorporated	153,000	175,000
12,000	Abbott Laboratories	326,000	494,000
8,000	Aluminum Company of America	378,000	439,000

(Continued)

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

SCHEDULE OF MARKETABLE SECURITIES
(Continued)

DECEMBER 31, 1980

As of December 31, 1979			
Shares or par value	Description	Cost	Fair value
Common Stock (Continued):			
12,000	Amx, Inc.	\$ 453,000	\$ 547,000
10,000	AMP, Incorporated	332,000	403,000
10,000	Atlantic Richfield Company	563,000	800,000
13,000	Big Three Industries	466,000	549,000
15,000	Black & Decker Manufacturing	310,000	345,000
7,000	Burlington Northern	424,000	393,000
10,000	Combustion Engineering	387,000	593,000
10,000	Hewlett-Packard Company	445,000	591,000
10,500	Hughes Tool	397,000	546,000
8,000	Ingersoll Rand	446,000	416,000
16,000	International Business Machines Corp.	997,000	1,030,000
10,000	Kaiser Steel Corporation	382,000	270,000
20,000	Kennecott Copper Corporation	574,000	630,000
8,000	Eli Lilly & Company	365,000	478,000
10,000	Lubrizol Corporation	464,000	551,000
10,000	Marathon Oil Company	309,000	500,000
12,000	McDonnell Douglas Corporation	287,000	438,000
7,000	Minnesota Mining & Manufacturing	382,000	352,000
10,000	Mobil Corporation	539,000	550,000
10,000	Philip Morris, Incorporated	310,000	360,000
15,000	Phillips Petroleum	525,000	720,000
10,000	Santa Fe Industries	381,000	520,000
10,000	Signal Companies, Incorporated	374,000	390,000
10,000	Standard Oil Company of Ohio	416,000	883,000
10,000	T.R.W., Incorporated	380,000	384,000
15,000	Tenneco, Inc.	520,000	581,000
5,000	Texas Instruments	447,000	440,000
15,000	Union Oil Co. of California	508,000	671,000
5,000	Union Pacific Corporation	237,000	361,000
10,000	United Technologies	338,000	430,000
8,000	Upjohn Company	356,000	378,000
15,000	Weyerhaeuser Company	469,000	476,000
7,000	Xerox Corporation	364,000	435,000
		<u>17,042,000</u>	<u>20,264,000</u>
		<u>\$51,904,000</u>	<u>\$52,268,000</u>

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

SCHEDULE OF REAL ESTATE LOANS

December 31, 1980

As of December 31, 1980			
Borrower	Description	Cost	Fair value
<u>Earning:</u>			
Paul and Kathryn Goodman	Participation loan dated December 14, 1972. Due September 1, 1993. Interest is at 8.25%	\$ 131,000	\$ 131,000
<u>Non-Earning:</u>			
Murrieta Hot Springs	Loans due in April 1983 and March 1984. Interest is at 10%. Collateral consists mainly of real estate. As of January 1, 1976, the Trustees determined to discontinue the recognition of interest revenue	\$ 7,385,000	\$ 7,385,000
Sierra Charter Corporation of Nevada*	Loans due ten years from date of final advancement on the loan. Repayment of sums advanced under modification agreement, together with interest thereon, to be made by assignment of third party mortgages and sales agreements. Interest is at 11%. Collateral consists mainly of real estate and the personal guarantee of Mr. Morris A. Shenker. As of January 1, 1976, the Trustees determined to discontinue the recognition of interest revenue	22,158,000 29,543,000	22,158,000 29,543,000
	Less allowance for possible losses	-	(15,960,000)
		\$29,543,000	\$13,583,000

* These loans may be party-in-interest transactions and may be prohibited under ERISA. For further information see Notes 7 and 8.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUSTSCHEDULE OF REAL ESTATE LOANS
(Continued)

December 31, 1980

As of December 31, 1979			
Borrower	Description	Cost	Fair value
<u>Earning:</u>			
Paul and Kathryn Grodman	Participation loan dated December 14, 1972. Due September 1, 1993. Interest is at 8.25%	\$ 134,000	\$ 134,000
<u>Non-Earning:</u>			
Murrieta Hot Springs	Loans due in April 1983 and March 1984. Interest is at 10%. Collateral consists mainly of real estate. As of January 1, 1976, the Trustees determined to discontinue the recognition of interest revenue	\$ 7,312,000	\$ 7,312,000
Sierra Charter Corporation of Nevada*	Loans due ten years from date of final advancement on the loan. Repayment of sums advanced under modification agreement, together with interest thereon, to be made by assignment of third party mortgages and sales agreements. Interest is at 11%. Collateral consists mainly of real estate and the personal guarantee of Mr. Morris A. Shenker. As of January 1, 1976, the Trustees determined to discontinue the recognition of interest revenue	20,675,000 27,987,000	20,675,000 27,987,000
	Less allowance for possible losses	-	(15,960,000)
		\$27,987,000	\$12,027,000

* These loans may be party-in-interest transactions and may be prohibited under ERISA. For further information see Notes 7 and 8.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

SCHEDULE OF REPORTABLE TRANSACTIONS

December 31, 1980

REPORTABLE PURCHASES - 1980

<u>Par Value/ Shares</u>	<u>Description</u>	<u>Purchase Price</u>	<u>Fair Value</u>	<u>Unrealized Appreciation (Depreciation)</u>
<u>Government and Agency Debt:</u>				
	No reportable purchases			
<u>Corporate Bonds:</u>				
	No reportable purchases			
<u>Commercial Paper:</u>				
\$3,243,000	General Electric Credit, 12.25%, due 1-15-80	\$3,243,000	\$3,243,000	\$ -0-
\$2,970,000	International Harvester Credit, 12.9%, due 1-29-80	2,970,000	2,970,000	-0-
\$3,049,000	Repurchase Agreement, 8%, due 1-30-80	3,049,000	3,049,000	-0-
<u>Common Stock:</u>				
	No reportable purchases			

NOTE: The Employer Retirement Income Security Act of 1974, Section 103 requires the reporting of any transactions involving an amount in excess of 3 percent of the current value of the assets of the Plan. These transactions are not reportable events as defined in Section 4043(b) of ERISA.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

SCHEDULE OF REPORTABLE TRANSACTIONS
(Continued)

December 31, 1980

REPORTABLE PURCHASES - 1979				
Par Value/ Shares	Description	Purchase Price	Fair Value	Unrealized Appreciation (Depreciation)
<u>Government and Agency Debt:</u>				
	No reportable purchases			
<u>Corporate Bonds:</u>				
	No reportable purchases			
<u>Commercial Paper:</u>				
\$3,243,000	International Harvester Credit, 13.125%, due 1/10/80	\$3,243,000	\$3,243,000	\$ -0-
<u>Common Stock:</u>				
	No reportable purchases			

NOTE: The Employer Retirement Income Security Act of 1974, Section 103 requires the reporting of any transactions involving an amount in excess of 3 percent of the current value of the assets of the Plan. These transactions are not reportable events as defined in Section 4043(b) of ERISA.

SOUTHERN NEVADA CULINARY AND
BARTENDERS PENSION TRUST

SCHEDULE OF REPORTABLE TRANSACTIONS
(Continued)

December 31, 1980

REPORTABLE SALES - 1980				
Par Value/ Shares	Description	Purchase Price	Selling Value	Gain or (loss) on Sale
<u>Government and Agency Debt:</u>				
	No reportable sales			
<u>Corporate Bonds:</u>				
	No reportable sales			
<u>Commercial Paper:</u>				
\$3,243,000	International Harvester Credit, 13.125%, due 1/10/80	\$3,243,000	\$3,243,000	\$ -0-
\$3,243,000	General Electric Credit, 12.25%, due 1-15-80	3,243,000	3,243,000	-0-
\$2,970,000	International Harvester Credit, 12.90%, due 1-29-80	2,970,000	2,970,000	-0-
\$3,049,000	Repurchase Agreement, 8%, due 1-30-80	3,049,000	3,049,000	-0-
<u>Common Stock:</u>				
	No reportable sales			

REPORTABLE SALES - 1979

There are no reportable transactions for
the year ended December 31, 1979.

NOTE: The Employer Retirement Income Security Act of 1974, Section 103 requires the reporting of any transactions involving an amount in excess of 3 percent of the current value of the assets of the Plan. These transactions are not reportable events as defined in Section 4043(b) of ERISA.

SEAVIEW VILLAGE, INC. (TIMBERSHORE)

This property is composed of 530 acres located in Lincoln County, Oregon, which is near the coast and approximately 100 miles southeast of Portland. The area is reported to have an annual rainfall in excess of 96 inches per year.

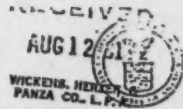
*Committee
Document
#38*

490 acres purchased by Seaview Village, Inc. \$345,000 3/21/72		Sold to Sierra on 9/27/76 for		\$3,000 cash	UAB Workout
+				+	
				Assumption of note dated 6/30/76 \$154,242.01 by Seaview payable to Finn & Brahs	
				+	
				Assumption of \$345,000 contract of sale (o/s balance 12/21/76 \$142,956.25)	
				+	
				Assumption of \$34,000 note re 40 acres sale (o/s balance 10/31/76 \$19,268.17)	
				+	
				Two notes totaling \$700,000 payable to Nebraska Insurance Co.	
				+	
				Approx. \$18,000 in past due taxes.	
					UAB Appraisal
					\$930,000
				Preparation of tract map for development - approx.	200,000
				Payment of liens set out -	
				\$154,242.01	
				142,956.25	
				19,268.17	
				700,000.00	
				18,000.00	
					<u>1,034,466.43</u>
				Therefore, to have this land ready for market plus clear title will cost UAB	<u>\$1,234,466.43</u>

Seaview Village, Inc.
Principals:
Donald Lucas
Howard Finn
Frank Brahs

Note: Above persons are involved in many land deals with Shenker.

Labor Management Services Administration
Room 804, Federal Office Building
1240 East Ninth Street
Cleveland, Ohio 44109
Reply to the Attention of:



Doc. 17

~~12~~
Pg 3

JUL 23 1975

Board of Trustees
Ohio Carpenters Health and Welfare Plan
4800 Belmont Avenue
Youngstown, Ohio 44505

Dear Trustees:

The Department of Labor has responsibility for administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Title I establishes standards governing the operation of employee benefit plans like the Ohio Carpenters Health and Welfare Plan (the Plan).

The Department has concluded its investigation of the Plan and of your activities as its trustees after January 1, 1975. Based on the facts gathered during this investigation, and subject to the possibility that additional information may lead us to revise our views, it appears that as trustees you have breached your fiduciary obligations to the Plan and have violated certain provisions of ERISA. The purpose of this letter is to advise you of our findings and to provide you with an opportunity to take remedial action.

As we understand the facts, many of which were provided by you to this Office during the course of our investigation, the trustees have authorized an entity called the Carpenters Central Collection and Administrative Agency (CCA) to collect, on behalf of the Plan, all payments required to be made to the Plan by contributing employers.

The CCA is a non-profit corporation organized under the Non-Profit Corporation Law of Ohio that collects contributions for fourteen different plans or programs. 1/ The Articles of Incorporation of the CCA provide that the purpose of the CCA is "(t)o establish, for the benefit of local unions and district councils affiliated with the United Brotherhood of Carpenters and Joiners Of America and the Ohio

1/ These include, in addition to the health and welfare plan, a pension plan, two apprenticeship funds, a labor relations division, a construction advancement program, a supplemental unemployment benefit plan, a charity fund, a united appeals fund, a legal defense fund, a "heavy highway" fund, a union dues fund, and a vacation fund.

State Council of Carpenters, a centralized collection and administrative agency to implement the collection and administration of fringe benefit and other funds designated in the terms of the collective bargaining agreements negotiated by the unions." The Articles of Incorporation of the CCA designate five initial trustees for the CCA. These five trustees are the same individuals that serve as union trustees for the Plan. According to its "Code of Regulations," the CCA is headed by a board of trustees elected by "participating members" in the CCA. Participating members are local unions, district councils, and the executive secretary of the Ohio State Council of Carpenters. It is not clear whether the CCA's members have replaced any of the original CCA trustees with new trustees. Neither the Articles of Incorporation nor the Code of Regulations of the CCA contain any provision indicating how the assets of the CCA are to be distributed upon its dissolution. Under the Ohio Non-Profit Corporation Law, if there is no provision in the articles of incorporation or code of regulations of a non profit corporation regarding distribution of its assets, "the assets shall be distributed pursuant to a plan of distribution adopted by the voting members at a meeting held for the purpose of voting on dissolution, or... (if no plan of distribution is so adopted by the voting members, then the assets shall be distributed pursuant to a plan of distribution adopted by the trustees."

The document authorizing the CCA to collect contributions for the Plan was approved by the board of trustees of the Plan at a board meeting on August 23, 1978. It does not appear that the union trustees who act as trustees for the CCA abstained from this vote. The document was signed on behalf of the Plan by union trustee Milan Marsh as "Chairman (of the) Board of Trustees" on the same day the board approved it. With respect to the compensation of CCA for its services, the document provides as follows:

In consideration of the Carpenters Central Collection and Administrative Agency's collecting, administering and distributing the funds due under applicable collective bargaining agreements, the (Plan) agrees to pay its proportionate share of the costs of operating the Carpenters Central Collection and Administrative Agency. To defray such costs, the Carpenters Central Collection and Administrative Agency is directed and authorized to retain and apply to its costs such interest as may be earned by it in transactions with depository banks and other financial institutions, penalties and court costs and attorney fees due under applicable collective bargaining agreements.

Under this arrangement between the Plan and the CCA, the CCA deposits contributions received from employers in a trust account that is invested in short-term instruments. After verifying the amounts contributed, the CCA disburses the contributions in this trust account to the Plan. Interest earned on plan assets deposited in the trust account is retained by the CCA as compensation for its services.

Section 406(b) of ERISA provides, in part, that:

(b) A fiduciary with respect to a plan shall not —

(2) in his individual or any other capacity act on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries...

The CCA is an entity that is separate and distinct from the Plan, and whose interests are adverse to the interests of the Plan. In addition to a variety of areas in which the interests of the Plan and the CCA are potentially adverse, it is clear that with respect to any arrangement for the compensation of the CCA, those interests are actually adverse. Accordingly, by effecting the arrangement between the Plan and the CCA, the union trustees of the CCA acted in violation of section 405(b)(2) of ERISA.

In addition, section 404(a)(1) of ERISA provides, in part, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims...

Under the compensation arrangement described above, the CCA is permitted to retain plan assets for an indeterminate period of time, and the CCA's compensation increases the longer the assets are retained. Because of this potential for abuse, we do not believe that the arrangement between the Plan and the CCA regarding the CCA's compensation meets the requirements set forth in section 404(a)(1)(B) of ERISA.

For the reasons set forth above, we propose that the Plan's trustees promptly reexamine the Plan's arrangement with the CCA, and that those trustees who are in a position to act without conflicting interests determine what if any future arrangement should exist, and the terms under which the Plan would be prepared to enter into such an arrangement. One of the objectives would ensure that in any future arrangement the CCA would not earn more than reasonable compensation for the services it performs. It would also be appropriate for the Plan's trustees to ascertain whether the Plan has paid any amount in excess of reasonable compensation to the CCA under the present arrangement. If the Plan has paid the CCA an amount in excess of reasonable compensation, the Plan should be reimbursed to the extent of such excess.

We have provided the foregoing statement of our views to help you evaluate your obligations as a fiduciary within the meaning of ERISA. In the event you fail to take the corrective action which we have suggested, this matter will be referred to the Office of the Solicitor of Labor for possible legal action.

Sincerely,

Joseph D. Caiola
Joseph D. Caiola
Area Administrator

cc: OE (53-11248) ✓

Edward F. Daly, Assistant Director
Division of Enforcement

Southern Nevada Culinary Workers and Bartenders
Pension Trust (EIN 88-6016617)
Las Vegas, Nevada
Case No. 72-6118

OGH Document #1

To: J. Vernon Ballard
Acting Administrator, FWBP

On March 7, 1977, an audit of the books and records of the captioned Fund was commenced by FWBP personnel. This is an interim memorandum as to what the audit has uncovered to date and a request for action by FWBP.

After one week of review of these books and records, it is the consensus of the assigned FWBP personnel that this Fund was being manipulated for the benefit of Sierra Charter Corporation of Nevada (Sierra) and Morris Shenker (Shenker) and not for the benefit of the participants and beneficiaries.

The total loan commitments to Murrieta Hot Springs (Murrieta) and Sierra as at December 31, 1976, was \$25.9 million, of which \$2.79 million was in unpaid interest. During January and February 1977, there were additional "advances" of \$1.3 million plus additional unpaid interest of approximately \$450,000.

The FWBP audit also ascertained certain commitments that were not disclosed on the books as liabilities, even though they are contingent liabilities. These contingent liabilities total \$3.8 million.

Therefore, the total known outstanding obligations of the Fund to Shenker operations at February 28, 1977, is approximately \$31.5 million. See attached Exhibit A.

In the Second Addendum to the loan agreement of June 17, 1974, and the First Addendum and Modification of July 28, 1975, there is contained on page 3 as item (10) which states that the lender (the Fund) acknowledges that Sierra has certain contingent obligations, the amounts of which are not presently known, but these obligations will be paid by advances from the Fund. Murrieta has the following pending law suits which total \$94,050:

1. A&L Asphalt, Inc. v/s Murrieta Hot Springs (\$7,000)
2. Credit Managers Association v/s Murrieta Hot Springs (\$26,000)
3. Magridichian v/s Murrieta Hot Springs (\$10,000)
4. Shay Electric Co. v/s Murrieta Hot Springs (\$7,500)
5. Yablon v/s Murrieta Hot Springs (\$2,750)
6. Telantograph Corporation v/s Murrieta Hot Springs (\$5,800)
7. Fair, et al., v. Murrieta Hot Springs (\$35,000)

AKC	FW	2-27

From the review of the Fund's records it appears that there is a "milking operation" of the advances to Sierra by Shenker in that this money is being siphoned off to other Shenker operations.

The money being advanced to Sierra by the Fund is to finance the sales and marketing of the Murrieta property. Some of this money was used to:

1. Buy a building in Los Vegas for the Sierra operations.
2. Settle a defaulted loan of Stan Franklin, President of Sierra, against the Moapa Indians in the amount of \$300,000.
3. Acquisition of new land by Sierra - the Salla Sea property.
4. Advance \$796,872 to Sidney Wynne, a business associate of Shenker.
5. Advance \$121,476 for an option to purchase 564 acres of land near Lake Tahoe that is owned by Stan Franklin.
6. HUD ordered suspension of sales by Sierra on July 7, 1975 until October 1, 1975. During this period of time, Sierra received \$2.2 million in "advances" for sales promotion work that was suspended by HUD.

These are a few of the major misuses of Sierra advances by the Fund. Attached is a letter dated October 20, 1975 to the Fund's Trustees from Earl Liever, paid Administrator for the Fund, which contains questionable uses of the Fund money.

Murrieta transferred title to 826 acres of its land to the Pipefitters Local 562 Welfare and Pension Funds in consideration of a \$11.5 million reduction of its indebtedness to the Pipefitters. Murrieta's cost basis of the property was \$3.6 million, which included a \$1.6 million profit to an affiliate.

Sierra now desires to transfer land to the captioned Fund in consideration of its indebtedness to the Fund. From the history of the Pipefitters Fund settlement it is believed that the captioned Fund will not receive an equitable settlement but will receive this same type of settlement as the Pipefitters.

It is recommended that you instruct the SOL to obtain an injunction to halt the payments of \$400,000 to \$800,000 a month to Sierra from the Fund. Time is of the essence because of the size of the monthly payments being distributed to Sierra by the Fund. It should be noted that Attorney Dave Allen, SOL, has been apprised of this matter and also believes that legal action is necessary.

Enclosures

cc-Dave Allen, SOL
Enforcement, Chron, Kane

The CHAIRMAN. I want to thank everybody who has cooperated in these matters. We will continue to do our work, and we hope that we will have even more cooperation in the future. With that, we will recess these hearings until further notice.

[Whereupon, at 2 p.m., the hearing was recessed, subject to the call of the Chair.]

○